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CITE THIS VOLUME 112 L Ed 2d

UNITED STATES SUPREME COURT REPORTS

OCTOBER TERM, 1990

CASES CONTAINED IN U. S. REPORTS

Vol. 498 US (opinion pages 1 to end)

LAWYERS' EDITION

SECOND SERIES

VOLUME 112

COMPLETE WITH HEADNOTES, SUMMARIES OF DECISIONS
AND BRIEFS, ANNOTATIONS, TABLES, AND INDEX

1993

Lawyers Cooperative Publishing
Aqueduct Building, Rochester, New York 14694

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Library of Congress Catalog Card Number 17–25985

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OF THE

SUPREME COURT OF THE UNITED STATES

DURING THE TIME OF THESE REPORTS

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JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

TOGETHER WITH THE DATES OF THEIR COMMISSIONS AND COMMENCEMENT OF SERVICE RESPECTIVELY

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MISCELLANEOUS PROCEEDINGS

October 1, 1990

Retirement of Justice Brennan

The Chief Justice said:

"Before calling the first case for argument this morning, it is appropriate for us to note that today, for the first time in thirty-four years, a Term of the Court commences without our colleague Justice William J. Brennan sitting beside us on the bench. For the past fifteen years, since the retirement of Justice William O. Douglas, Justice Brennan was the senior Associate Justice of the Court. Following his retirement this summer, his colleagues on the Court joined in sending him a letter which reads as follows:

Dear Bill:

Your decision to retire has already brought forth from others numerous accolades rightly testifying to your accomplishments as a Justice of this Court. You served here for nearly thirty-four years-a period exceeded by only four other members of the Court. But your profound influence upon American constitutional law arises not merely from the length of your service, but from the many notable opinions which you authored during that time.

We, who have been your colleagues, have had the benefit of knowing you in a way that scholars viewing your place in history cannot. You have been our companion in our daily sojourns on the bench and in our sessions around the conference table. The personal warmth which you radiate has enriched all of our lives, and has inspired all of us to maintain the cordial relations so necessary among those who may find themselves in disagreement with one another in the work which they mutually undertake.

We will miss your wise counsel in our deliberations, but we know that present surcease from the labors of the Court bids fair to restore you to the good health which we so very much wish for you,

Affectionately,
William H. Rehnquist
Byron R. White
Thurgood Marshall
Harry A. Blackmun
John P. Stevens
Sandra Day O'Connor
Antonin Scalia
Anthony M. Kennedy."

Justice Brennan replied as follows:

"Dear Colleagues,

I am deeply touched by your letter regarding my retirement. Its gracious sentiments reflect the very collegiality to which you pay tribute, and it is therefore a fitting keepsake—one that I and my family will always cherish—of our work together. The opportunity to have served on this Court has, of course, been a rare privilege, but equally rare has been the chance to form so many rich friendships in the course of that work.

I had hoped that this happy identity between colleagues and friends would persist for many more years. Indeed, my reluctance to retire from the Court was sharpened by an awareness that I will no longer sit with each of you on the bench or in the conferences, sharing in the work of this mutual enterprise. I believe the Court has achieved much in recent decades, and the pleasure of reflecting on that record is strengthened by the knowledge that we have participated in these accomplishments together. But I know that friendships forged in this Court are sustained by more than a common endeavor, and I therefore take comfort in the expectation that our personal ties will endure in the years ahead. With warm best wishes to each of you,

Sincerely,
William J. Brennan, Jr."

MISCELLANEOUS PROCEEDINGS

October 9, 1990

PRESENTMENT OF HONORABLE DAVID H. SOUTER AS ASSOCIATE JUSTICE OF UNITED STATES SUPREME COURT

The Chief Justice said:

"This special sitting of the Court is held today to receive the Commission of the newly appointed Associate Justice of the Supreme Court of the United States, David Hackett Souter. The Court now recognizes the Attorney General of the United States, Mr. Thornburg."

The Attorney General said:

"Mr. Chief Justice and may it please the Court, I have the Commission which has been issued to the Honorable David Hackett Souter as an Associate Justice of the Supreme Court of the United States. The Commission has been duly signed by the President of the United States and attested by me as the Attorney General of the United States. I move that the Clerk read the Commission and that it be made part of the permanent records of this Court."

The Chief Justice said:

"Thank you, Mr. Attorney General, your motion is granted. Mr. Clerk, will you please read the Commission?"

The Clerk then read the Commission as follows:

"George Bush, President of the United States of America,

"To all who shall see these Presents, Greeting:

"Know Ye; That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of David H. Souter, of New Hampshire, I have nominated, and, by and with the advice and consent of the Senate, do appoint him an Associate Justice of the Supreme Court of the United States and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to have and to hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto Him, the said David H. Souter, during his good behavior.

"In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Done at the City of Washington, this third day of October, in the year of our Lord one thousand nine hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

"By the President: George Bush.
"Dick Thornburg, Attorney General."

The Chief Justice said:

"I now ask the Chief Deputy Clerk of the Court to escort Judge Souter to the bench."

The Chief Justice said:

"Judge Souter, are you ready to take the oath?"

Judge Souter said:

"I am."

The oath of office was then administered by the Chief Justice in the following words:

"I, David Hackett Souter, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court of the United States, according to the best of my abilities and understanding, agreeable to the Constitution and laws of the United States. So help me God."

The Chief Justice said:

"Justice Souter, on behalf of all the members of the Court, it is a pleasure to extend to you a very warm welcome as an Associate Justice of the Court and to wish for you a long and happy career in our common calling."

The Chief Justice said:

"Effective with the appointment of Justice Souter, an order has been entered by the Court today allotting the circuit justices as follows:

District of Columbia, Fourth and Federal Circuits: Chief Justice
First and Third Circuits: Justice Souter
Second Circuit: Justice Marshall
Sixth and Seventh Circuits: Justice Stevens
Eighth Circuit: Justice Blackmun
Ninth Circuit: Justice O'Connor
Tenth Circuit: Justice White
Eleventh Circuit: Justice Kennedy."

October 9, 1990

ALLOTMENT ORDER

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42 and that such allotment be entered of record, effective October 9, 1990, viz.:

For the District of Columbia, William H. Rehnquist, Chief Justice,
For the First Circuit, David H. Souter, Associate Justice,
For the Second Circuit, Thurgood Marshall, Associate Justice,
For the Third Circuit, David H. Souter, Associate Justice,
For the Fourth Circuit, William H. Rehnquist, Chief Justice,
For the Fifth Circuit, Antonin Scalia, Associate Justice,
For the Sixth Circuit, John Paul Stevens, Associate Justice,
For the Seventh Circuit, John Paul Stevens, Associate Justice,
For the Eighth Circuit, Harry A. Blackmun, Associate Justice,
For the Ninth Circuit, Sandra Day O'Connor, Associate Justice,
For the Tenth Circuit, Byron R. White, Associate Justice,
For the Eleventh Circuit, Anthony M. Kennedy, Associate Justice,
For the Federal Circuit, William H. Rehnquist, Chief Justice.

MISCELLANEOUS PROCEEDINGS

October 15, 1990

PROCEEDINGS IN MEMORY OF JUSTICE GOLDBERG

The Chief Justice said:

"The Court is in special session this afternoon to receive the resolutions of the Bar of the Supreme Court in tribute to our former colleague and friend, the late Justice Goldberg. The Solicitor General is recognized at this time for the purpose of presenting those resolutions which were adopted by the Bar. Mr. Solicitor General."

Mr. Solicitor General Starr addressed the Court as follows:

"Mr. Chief Justice, and may it please the Court:

"The members of the Bar of the Supreme Court of the United States meet today to record our respect, admiration, and affection for Arthur J. Goldberg, who served as Associate Justice from 1962 to 1965, and who gave life for sixty years to the ideal of justice as it is embodied in law.

"Few people find the variety of opportunities for public service that come to Arthur Goldberg. Still fewer improve their opportunities so fully.

"Yet if this extraordinary man played an unusual number of different roles—as practitioner, as military intelligence officer, as Cabinet member, as an Associate Justice on this Court, as Ambassador, as statesman emeritus—he always kept his own character. He possessed both an unfailing sense of justice and the ability to make it work.

"Born in Chicago on August 8, 1908, Arthur Goldberg would say sixty years later, 'my concern for justice, for peace, for enlightenment, for morality all stem from my heritage'. He was speaking particularly on that occasion, when he accepted the presidency of the American Jewish Committee, as a proud heir of Judaism. Many of us, of all faiths, were introduced to that inheritance as guests at Passover Seders at the Goldberg home on Albemarle Street. He wrote the family Haggadah, equating the Israelites' story to the civil rights struggle of the 1960s, and he told the Story of Exodus in contemporary terms.

"Justice Goldberg was also acknowledging, with equal pride, the legacy of deep understanding and compassion that came from the humble circumstances of his formative years. True to the great universals of his Faith, he was also American to the core. His father, Joseph Goldberg, the town clerk of Zhinkov, a Ukrainian village northeast of Kiev, had come to Texas in 1890 by way of Vladivostok, Alaska, and California, and had then, in the pioneer tradition of this country—but reversing the conventional route—driven a horse and wagon across the great plains to Chicago.

"Sending as soon as he could for his wife Rebecca and their daughter Mary, Joseph carved out a living the hard way. An educated man, he could find work only as a peddler to shops and hotels on Chicago's West Side of fruits and vegetables he picked up at the South Water Street Market. The family grew rapidly, Arthur being the last of Rebecca and Joseph's six children born in this country.

"Arthur would recall that the family moved from apartment to apartment each year, taking advantage of the one month's free rent to new tenants. Another recollection was of going out on the street with his father in the early morning before school opened to sell vegetables from a wagon pulled by a horse that had only one good eye. They couldn't afford, he explained, a horse with two good eyes.

"After his father's death, when Arthur was eight, his brothers and sisters, none of whom had gone beyond grade school, pitched in to send him to Theodore Herzl Elementary School. He went on to Crane Junior College where he had an English teacher, Lillian Herstein, who was an official of the Chicago Federation of Labor and who interested her young pupil in the needs of working people. Arthur took some classes, too, at De Paul University.

"In 1926, the eighteen-year-old Goldberg, deeply affected by Clarence Darrow's defense of Loeb and Leopold, entered Northwestern Law School. John Henry Wigmore, Northwestern's dean, picked him out to help on the preparation of the Third Edition of Wigmore's Cases on the Law of Evidence. Earning his keep all the way, Arthur finished at the top of his class and began clerking in one of the Chicago firms.

"Two years later, the fledgling lawyer married Dorothy Kurgans. They shared brilliance of mind, warmth of heart, and commitment to justice and humanity. Dorothy, the adored mother of Barbara and Robert, became a treasured artist and admired author, a distinguished civic leader, and the beloved friend of all those in the Goldbergs' ever-widening circle of acquaintances and associates. For 57 years, until her death in 1988, she and Arthur drew much of their strength from each other.

"Joining at first an established and distinguished Chicago law firm, the brilliant young

Northwestern graduate soon realized his lack of enthusiasm for representing bondholder committees and foreclosing mortgages on little people's property. Undaunted by the darkest economic clouds the country has ever known, he and an associate set up their own office in 1933, and sought their clientele among employees and labor unions.

"This courageous step was the start of almost thirty years of labor representation. It would lead to Arthur Goldberg's national preeminence in the field, and to his becoming the only labor lawyer in history to attain membership on this Court.

"Upon the outbreak of war in 1941, General William J. Donovan, setting up the Office of Strategic Services, asked the young labor lawyer from Chicago to establish an Intelligence network that would draw on union leaders in Germany, throughout occupied Europe, and around the world. Goldberg assembled a staff made up at first of other labor lawyers, many of whom later became members of this Bar.

"Most of the details of the OSS Labor Branch's activities are still sealed in official obscurity. Its chief, who carried the rank of Major and was based first in Washington, then in London, never talked much about his activities. We know that he was at Omaha Beach, in North Africa and Egypt and Israel, and very close to the heavy water plants in Norway. When asked, one of his lawyer associates, who was with the first allied troops to cross the Bridge at Remagen—in order to protect the Labor Branch's sources there—answers with characteristically restrained pride, 'Yes, I guess we were able to make a significant contribution.' Those who shared this service with him recall a respect for Arthur Goldberg rarely accorded a man in his middle thirties.

"At the end of the war, Goldberg and an OSS associate, Carl Devoe, returned to Chicago, where Arthur resumed the representation of workers and labor unions. On the occasion of the 40th anniversary of the firm they established, founder Goldberg would write:

> 'Our firm honored the precept that (the lawyer) is not meant to be a servant of the client, . . . but to serve the client—a very different thing. The committment of lawyers is the attainment of justice, the ultimant goal of the rule of law . . . . If we are to realize (this) goal, the law must be a flexible living instrument, ... a balance wheel, not a brake.'

"Soon after his return to practice Goldberg became counsel to several unions that had broken away from the American Federation of Labor and formed the Congress of Industrial Organizations; he eventually became General Counsel to the CIO itself. It was a protean situation and his responsibilities were broad. They included a leadership role in cleansing some of these unions of both corruption and communism, which he insisted be done without compromising democracy's tenets.

"It was a noteworthy Goldberg characteristic that he always enlarged his effectiveness by assembling around him extraordinarily competent and highly principled associates. Naming any of them would risk unfairness to others, except that they would all share the desire to recognize the lifelong participation in his achievements of his executive assistant, Frances Simonson Guilbert.

"As advocates in this Court and others, Arthur Goldberg and his colleagues helped forge critical links in the law of collective bargaining. Yet he counted litigation a last and poor resort. Almost constantly at the center of controversy, he believed deeply in negotiation and agreement as superior processes of dispute resolution. One of the nation's most effective negotiators, he was respected equally by those on both sides of the bargaining table. He was known, one commentator reported after his death, as a 'nice guy and a tough customer at the same time.'

"Only in hindsight is it clear how far the contribution of labor lawyers in the 1940s and '50s went beyond their services to immediate clients. A century of judicial enjoining and penalizing of strikes, picketing, and boycotts had engrained in workers and their unions a bitterness toward the law. They also distrusted what they regarded as lawyers' fondness for technicality and casuistry. Despite these obstacles, Arthur Goldberg and his colleagues at the labor bar, finding justice in the labor statutes of the 1930s, managed to build among workers and their unions a degree of confidence in the legal process.

"The Counsel for the Steelworkers and the CIO was a principal architect of the merger of American labor unions in 1955. He drafted the crucial 'no-raiding' agreement. When a critical impasse developed over a name for the new organization, symbolizing the divisions among the parties, Goldberg broke the deadlock with an equally symbolic resolution that committed future generations to the clumsy but egalitarian 'American Federation of Labor and Congress of Industrial Organizations.'

"Senator John F. Kennedy of Massachusetts had come to know Arthur Goldberg and to respect him for both his advocacy of labor's interest and his underlying independence of mind. In January of 1961, Goldberg became President Kennedy's first Secretary of Labor. Although that term would prove to be short, its achievements led the official department historian to report recently that 'no other Secretary of Labor has had as much influence on national labor policy as Goldberg.'

"In his first 90 days, Secretary Goldberg initiated the Extended Unemployment Act of 1961; prepared a bill increasing the minimum wage and another establishing the Manpower Development and Training Program; drafted, with the Attorney General, an executive order setting up the President's Committee on Equal Employment Opportunity; prepared additional orders organizing the President's Labor-Management Advisory Committee and a Committee on the Status of Women. His clients in those three months included the unemployed, the poor, minorities, and women. His brief was for justice and equality.

"Secretary Goldberg undertook and accomplished successfully, during his 20 months in the Labor Department, the mediation of twelve national emergency labor disputes. Despite his previous professional representation of workers' interests, his commitment to justice and fairness, and his ability to bring those abstractions to the table, help to account for his extraordinary success at mediation. To those who criticized these efforts later as undue government intervention, he replied simply: 'President Kennedy believed in an activist government to protect the public interest. I shared this belief.'

"Arthur Goldberg's zeal for justice had shown itself in every facet of his professional life. So it was appropriate that in August of 1962 President Kennedy nominated him to be an Associate Justice of this Court. His selection was endorsed in the Senate, and more generally, by acclamation.

"Shortly before Justice Goldberg was appointed to the Supreme Court he described what he called the 'liberal spirit' as an 'attitude of idealism based upon the possible.'

"Those few words capture Arthur Goldberg's tenure on the Court. Few Justices in history have contributed so much in so short a time. His idealism and his constantly fresh perspective combined with his superb legal skills and diligent scholarship to produce a stream of opinions that, from the very first, had an influence highly unusual for the newcomer to the Court.

"Time after time, whether he was in the majority or concurring or in the dissent, he offered new ideas and new applications based soundly in values and traditions deeply rooted in our nation's history and complemented by a sound sense of strategy. He seemed to know both intuitively and intellectually what would move the law along, not just from the previous case to the current one, but down a path that would build for the longer term.

"His writing ranged across the law, but it rang with greatest clarity and power when he was expounding on the Constitution. When he spoke on a constitutional issue before the Court, he repeatedly looked both to history and posterity, whether the issue was assuring the right of marital privacy or guaranteeing the right of a person accused of crime to be questioned in the presence of his lawyer, limiting the use of capital punishment or hastening the pace of desegregation, protecting the right of people to criticize public officials or articulating appropriate accommodations between church and state, vindicating the rights of civil rights protesters or seeing that the status of citizenship is not arbitrarily taken away.

"It would be difficult to identify Justice Goldberg's most important opinion—there were many, even in that brief span of time. One he felt strongly about was his concurrence in Griswold v Connecticut, 381 US 479 [14 L Ed 2d 510, 85 S Ct 1678] (1965), in which he made a powerful scholarly argument that the Ninth Amendment shows the Framers' belief in fundamental personal liberties which are not specifically mentioned in the Bill of Rights. He stressed that he was not arguing 'that the Ninth Amendment constitutes an independent source of rights,' but rather that it 'shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive.' He sensed that Griswold was to be a critical stepping stone in constitutional history, and his concurrence added weight to its impact in later cases.

"Justice Goldberg's opinion for the Court in Escobedo v Illinois, 378 US 478 [12 L Ed 2d 977 84 S Ct 1758] (1964), was an important step in the march to Miranda v Arizona, 384 US 436 [16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974] (1966). Building on Gideon v Wainwright, 372 US 335 [9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733] (1963), which held that every person accused of a crime is entitled to a lawyer at trial, he wrote for the majority that 'when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession,' the adversary system is in play, and the assistance of counsel becomes a constitutional imperative.

"Justice Goldberg's remarkable blend of idealism and practicality was reflected in his eloquent statement in Escobedo that 'no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights.' His opinion was grounded upon the practical reality that the prosecutorial process is not just a judicial matter, but begins when the defendant is in the hands of the police. The right to counsel at trial, he wrote, would be hollow indeed if the trial is 'no more than an appeal from the interrogation,' where advice of counsel is denied. He referred in particular to the duty of the police to advise a defendant of his right to remain silent, the key building block underlying the decision in Miranda two years later.

"Justice Goldberg's initiative on capital punishment began a process of great historical significance. After his first year on the Court, he decided to circularize his colleagues on the issue. He prepared a long memorandum to the entire Court expressing the view that the 'institutionalized taking of life by the state' was 'barbaric and inhuman.' Then, aware that most of the other Justices would want to proceed only a step at a time if at all, he offered a more measured analysis broken down by type of crime and offender, to suggest categories of cases in which imposition of the death penalty might more readily be found unconstitutional.

"He never published the memorandum, but, joined by Justices Douglas and Brennan, he did publish a brief dissent to the denial of certiorari in Rudolph v Alabama, 375 US 889 [11 L Ed 2d 119, 84 S Ct 155] (1963), a case involving a black man under sentence of death for the rape of a white woman. The effect was as he had hoped. The civil rights and civil liberties communities undertook a strategy to present the Court with a series of capital punishment cases, which culminated with the decision in Furman v Georgia, 408 US 239 [33 L Ed 2d 346, 92 S Ct 2726] (1972).

"When Justice Goldberg joined the Court, nearly a decade had passed since Brown v Board of Education, 347 US 483 [98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180] (1954), had been decided. He, along with many others, was concerned that 'all deliberate speed' had acquired much more emphasis on the 'deliberate' than on the 'speed.' During his first Term, a case arose, Watson v Memphis, 373 US 526 [10 L Ed 2d 529, 8 S Ct 1314] (1963), involving the pace of desegregation of parks and recreational facilities in Memphis, Tennessee. Instead of simply deciding that desegregating parks was not so exceptionally complex as to require the eight-year period the city was seeking, Justice Goldberg led a unanimous Court in sending a broader message about the pace of desegregation. He wrote 'Brown never contemplated . . . indefinite delay in elimination of racial barriers in schools, let alone other public facilities . . . . The rights here asserted are, like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional process.'

"Watson is only one among any important decisions in the post-Brown history, but, as with so many Goldberg opinions, it made an important and eloquent statement that advanced the law significantly at a strategically crucial moment.

"Justice Goldberg's original turn of mind often led him to concur, as he did in Griswold, on the basis of a different theory from the one advanced in the majority opinion. For example, in New York Times Co. v Sullivan, 376 US 254 [11 L Ed 2d 686, 84 S Ct 710, 95 ALR2d 1412] (1964), joined by Justice Douglas, he said the majority's 'actual malice' standard was wrong. He believed the 'citizen and the press' should have 'an unconditional privilege to criticize official conduct,' even if the privilege is sometimes abused. 'The prized American right "to speak one's mind" . . . should not depend upon a probing by the jury of the motivation' of the speaker, lest public debate and advocacy be constrained. Subjecting the press to libel damages for criticizing official conduct would mean that 'no critical citizen can safely utter anything but faint praise about the government or its officials.'

"Justice Goldberg would, on the other hand, have allowed recovery for defamatory statements against a public official when directed against his private conduct and he would have done so on the basis of the traditional libel standard rather than by the more restrictive 'actual malice' approach. This was a distinction grounded both in Justice Goldberg's bent for the practical and in his idealism. Maintaining his belief in the importance of individual privacy, he insisted equally on the broadest scope for criticism of official conduct. As time has passed, his position in New York Times Co. v Sullivan has, as a consequence, found adherents among both the press and advocates of privacy.

"School District of Abington v Schempp, 374 US 203 [10 L Ed 2d 844, 83 S Ct 1560] (1963), the public school Bible-reading case, led to another important concurrence. Joined by Justice Harlan, Justice Goldberg worried that a rigid concept of state neutrality would result in a 'brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious.' He agreed that devotional Bible-reading was unconstitutional, but said 'proving military chaplains' would not be.

"The opinion stressed that the constitutionally required aim is to find the 'required and permissible accommodations between state and church (to) frame the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns or practices of the other.' The Justice recognized that "the judgment in each case is a delicate one, . . . but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.' His emphasis on the need for accommodation in order to vindicate both the establishment clause and the free exercise clause is an idea that has found favor in recent First Amendment jurisprudence.

"In the early 1960s the Supreme Court was struggling with the issue of how to handle trespass convictions for sit-in demonstrations protesting whites-only policies of lunch counters and restaurants. Justice Goldberg wrote a concurrence in Bell v Maryland, 378 US 226 [12 L Ed 2d 822, 84 S Ct 1814] (1964), a case in which the Court's disposition was to remand the matter for further consideration by the Maryland courts in light of that state's enactment of an equal-accommodations law. Marshalling impressive historical evidence, as he often did, Justice Goldberg argued that the 'American commitment to equality' as manifested in the post-Civil War constitutional amendments contemplated 'that the states would continue, as they had for ages, to enforce the right of citizens to enter public places,' and that a state's ' "omission to protect" ' a person against racially discriminatory exclusion constituted a denial of the equal protection of the laws.

"The question was in effect mooted by the passage of the Civil Rights Act of 1964. Had the sit-in issue remained on the front burner, however, Justice Goldberg's reasoning might well have served as the groundwork for a decision invalidating convictions like the one in Bell.

"Another enduring contribution came in Kennedy v Mendoza-Martinez, 372 US 144 [9 L Ed 2d 644, 83 S Ct 554] (1963), which he wrote when he had been on the Court for less that five months. At issue was the validity of a statute that deprived Americans of their citizenship if they left the country or stayed away during a war or time of national emergency in order to avoid military service. The Court was divided, and Justice Goldberg was able to stitch together a majority on the theory that the statute was 'penal in character . . . (and) constituted governmental punishment without due process of law and without the rights guaranteed all those accused of crimes . . . .' It was an early example of the fresh but sound approach that was characteristic of the Justice's work.

"Justice Goldberg's attention and superb legal skills were also focused intently on the innumerable non-constitutional issues that comprise the bulk of the cases that fill the federal courts and that must ultimately be supervised by the Supreme Court. To these mundane but vital issues of common law, procedure, and statutory interpretation, the Justice brought an intense professional interest, his years of practical experience as a litigator and advocate, and his sense of balance between literal directives and their purposes.

"In Foman v Davis, 371 US 178 [9 L Ed 2d 222, 83 S Ct 227] (1962), which involved an application of the Federal Rules of Civil Procedure but has been cited in and guided hundreds of unreported trial court decisions, a key issue was whether, when, and why a complaint could be amended. Writing for the Court, Justice Goldberg gave meaning to the fundamental principle that the rules should be applied to grant litigants decisions on the merits. By ruling that it was an abuse of discretion to refuse an amendment without an explicit or apparent reason, he placed the burden on the party who sought to win without reaching the merits.

"In 1965 President Lyndon Johnson prevailed on Justice Goldberg to leave the Court for the position of United States Ambassador to the United Nations. He was sworn in as Ambassador by his good friend Justice Hugo Black. The reluctance with which he left the Court is perhaps suggested, poignantly, in his asking at the UN to be addressed and referred to as Justice Goldberg.

"He continued as a diplomat his passionate pursuit of freedom and justice for all people. He found at the United Nations, from 1965 to 1968, a world very different from the Court. Here was conflict in Cyprus, Kashmir, and the Middle East; diplomacy in the reelection of U Thant as Secretary General; intrigue in the complex internal and external discussions relating to the war in Vietnam; international law in the decision of the International Court of Justice regarding South Africa's stewardship of South West Africa.

"The Justice made the transition with ease. The situation called for new knowledge, but no one could have come better prepared. Foreign policy had long been among his most intense interests, and international diplomacy was virtually second nature to him. He became deeply immersed personally in all of the issues at the United Nations of concern to the United States, more so perhaps than U.S. ambassadors before and after him. He impressed the foreign service officers who worked closely with him by the degree to which he did his homework on every issue, by the energy that he put into resolving the issues before him, and by his negotiating skills.

"As one aide at the United States Mission to the United Nations observed, the new ambassador 'raised negotiation to an art form.' Until he came to the UN, it had operated primarily in public—in the Security Council or the General Assembly—where, once positions were taken, there was little room for maneuvering. Justice Goldberg believed strongly in negotiating positions and working out agreements as a means of resolving disputes rather than taking hard and fast public positions. A group of UN security guards commented once to a member of Goldberg's staff on the changes he had brought to the modus operandi of the United Nations, noting that many of the delegates had begun to engage in negotiation prior to meeting in the Security Council.

"These were not easy years in the community of nations, nor for the foreign policy of the United States. Justice Goldberg experienced great frustration, especially with regard to the moving target of peace in Southeast Asia. To his deep regret, it was impossible to control, and ultimately to affect, the course of events from an office at the United States Mission to the United Nations. The distance from Washington was something no Cabinet title could overcome. He expressed nostalgia for the Court and, especially, its tidy decision-making. He remarked on more than one occasion that no one at the United Nations could say 'it is so ordered.'

"But there was triumph, too, especially in regard to the Middle East. The U.S. Mission in New York did indeed function as a second State Department during the 'Six-Day War' in June of 1967. And in the fall of 1967, there came the crowning achievement of Resolution 242, following months of subtle and painstaking negotiations with all sides in the Middle East dispute. This Resolution established a framework for a lasting peace, an objective that ranked among the highest of Justice Goldberg's public goals. He succeeded here because, as a representative of the United States, he was so believable. With knowledge of the legal implications, credible access to high levels of U.S. political power, and unusual insight into the reasoning and motivation of his counterparts, he was able to move the entire institution of the United Nations to an extent most observers had thought impossible. Resolution 242 still remains, twenty-three years later, the framework for pursuing peace in the Middle East.

"The Nuclear Non-Proliferation Treaty offers another example of his skill as a negotiator. In the early stages of the development of that treaty, after the Eighteen Nation Disarmament Committee had prepared the initial draft, the deputy foreign minister of the Soviet Union came to New York to meet with Goldberg to ask if he would take over the negotiations, inasmuch as the Soviet Union and its ambassador to the UN had lost credibility with most of the 'near-nuclear' and non-nuclear nations. With Justice Goldberg as chair, the ambassadors of the eighteen nations met for two days of intensive negotiations. Then he took the three principal holdouts aside and was able to negotiate compromise language that would get them to agree to the treaty. That treaty is the product of his patience, his concern for the safety of the world, his consummate skill as a negotiator, and his persistence.

"He negotiated patiently with Greek, Turkish, and Cypriot leaders to forestall a war between Greece and Turkey over Cyprus. One all-night session led to some imaginative approaches to defusing this very dangerous situation at a time when both the White House and the State Department were distracted by Vietnam and unable to recognize the seriousness of what was about to happen in Cyprus.

"Justice Goldberg took the unprecedented step of formally protesting to the UN Commission on Human Rights against the suppression of free speech in the Soviet Union through the secret trials and imprisonment of dissident writers. This reflected, as he stated it, his own deep commitment to 'the belief that freedom of information and of expression are essential to the preservation and advancement of human rights.' The idea of addressing the Commission originated with him and not his aides or the State Department. Stating that 'a trial for the crime of writing a literary work . . . is an outrageous attempt to give the form of legality to the suppression of a basic human right,' he noted that the secret trials were in violation of Article 11 of the Universal Declaration of Human Rights. He then pointed out that, ironically, the acts for which the accused were tried were protected not only by the Declaration of Human Rights but also by the Soviet Constitution itself.

"Justice Goldberg took a strong stand with the State Department and the White House on many issues where he felt that the spirit, if not the letter, of agreements was being violated. Through the force of his personality, his understanding of the legal issues involved, and the correctness of his position, he was able to get the State Department to change its policy.

"Although Justice Goldberg was widely known to be unhappy with American policy in Vietnam, he declined, at the time of his resignation, to list any disagreement with Administration policy. His refusal to dwell on what were profound differences, particularly over the bombing of North Vietnam, was characteristic of his view that such differences should be treated as 'within the family.' He resigned when it became apparent that his voice was no longer persuasive in the inner policy-making circles. At the time of his resignation, leading commentators noted his recognition by UN ambassadors as one of the most effective of those who have served as the American representative to the United Nations. He had done much to help maintain peace in many unpublicized ways and to ensure that the United States remained as much as possible on the high road. His sense of justice and of ethics would permit no less.

"Upon leaving the United Nations, Justice Goldberg initially re-entered private law practice, but his innate activism continued to draw him in many directions, always working for justice. In mid-1968 he agreed to handle the appeal of the Reverend William Sloane Coffin, Jr., from his conviction for civil disobedience in opposition to the war in Vietnam. The following year, he co-chaired, with former Attorney General Ramsey Clark, a commission of inquiry into the deaths of Black Panther leaders in Chicago in a pre-dawn police department raid.

"In 1970 the Democratic Party drafted Justice Goldberg to be its candidate for Governor of New York. Following an unsuccessful campaign, he moved back to Washington, to practice law and to serve, as a highly active 'elder statesman,' those causes that seemed to him interesting and worthwhile. He was President Jimmy Carter's Ambassador to the Belgrade Conference on Human Rights. He argued the Curt Flood case in the Supreme Court, trying to subject professional baseball to the antitrust laws; represented federal judges in litigation seeking a pay raise; served as Special Counsel to the Rhode Island Judicial Commission in a sensitive judicial ethics case; and spent considerable time making a scholarly case that Klaus Barbie could still be brought to account for crimes against humanity.

"Justice Goldberg found time to chair the American Jewish Committee and to be active in many Jewish causes. He helped Cardinal O'Connor convince the Army to create standards of 'human rights' for enlisted men. He chaired a committee to right the wrongs done to Japanese citizens of the United States during World War II. He mediated international disputes. And nearly every year he went to some college or law school to be a resident scholar and teacher, to introduce young people to his beloved Constitution.

"The breadth and quality of this remarkable man's contributions to his country were acknowledged in President Carter's conferring on him in 1978 the Presidential Medal of Freedom. Yet saying today, as members of this Bar, our final farewell, it cannot be inappropriate to recognize that Arthur Goldberg prized above all else his opportunity to serve as a member of this Court.

"He loved the Court. Sitting on this bench was the fulfillment of his life's ambition. But he loved his country even more. His President told him in 1965 that America needed his unique negotiating skills to further the cause of peace. A son of immigrants and a deeply patriotic man, he responded to that call. It was just that simple.

"Wherefore, it is accordingly

"RESOLVED, that we, the Bar of the Supreme Court of the United States, express our profound sorrow that Associate Justice Goldberg is no longer with us; we express our admiration for his dedication in carrying the principles and standards of the legal profession into so many areas of public service, and our respect for his contributions to the letter of the law and to the effectuation of its purpose; we state once more our affection for a man who felt deeply, spoke out strongly, and was devoted to what his wide-ranging experience disclosed to him as justice; and it is further

"RESOLVED, that the Solicitor General be asked to present these Resolutions to the Court and that the Attorney General be asked to move that they be inscribed upon the Court's permanent records.

"SUBMITTED BY THE COMMITTEE ON RESOLUTIONS: Norton J. Come, Esq., Jerome A. Cooper, Esq., Archibald Cox, Esq., Alan M. Dershowitz, Esq., Dean Peter B. Edelman, Marian Wright Edelman, Esq., Dean David B. Filvaroff, Stephen R. Goldstein, Esq., Thomas E. Harris, Esq., Hon. William J. Kilberg, Ms. Betsy Levin, Lee B. McTurnan, Esq., Thomas W. Merrill, Esq., Newton Minow, Esq., Michael Rodak, Jr., Lois Williams, Esq., W. Willard Wirtz, Chairman."

The Chief Justice said:

"Thank you, Mr. Solicitor General. The Court now recognizes the Attorney General of the United States."

Mr. Attorney General Thornburgh addressed the Court as follows:

"Mr. Chief Justice, and may it please the Court:

"The Bar of this Court met today to honor the memory of Arthur Joseph Goldberg, Associate Justice of the Supreme Court from 1962 to 1965.

"Arthur Goldberg served the Nation with distinction as a lawyer, soldier, Cabinet officer, Supreme Court Justice, and diplomat. Born in Chicago in 1908, he was educated in the Chicago public schools and at Northwestern University, where he was first in his law school class and Editor-in-Chief of the Law Review.

"By special dispensation, Arthur Goldberg sat for the Illinois bar examination before he reached the age of 21. He was admitted to the Illinois bar in 1929 and began a general law practice in Chicago. He opened his own law office in 1933, and soon began handling labor matters for clients such as the United Steelworkers and the Chicago Newspaper Guild.

"During World War II, Arthur Goldberg served under William J. Donovan as Chief of the Labor Division in the Office of Strategic Services. He carried out several intelligence missions to Europe, where he organized transportation workers into a valuable Allied intelligence network.

"After the war, he resumed his law practice and soon gained recognition as a preeminent labor lawyer. He served as general counsel to the United Steelworkers from 1948 to 1961. As general counsel to the Congress of Industrial Organizations (CIO), Arthur Goldberg played a major role in the merger of that organization and the American Federation of Labor in 1955. He remained as special counsel to the merged AFL-CIO until 1961. During this period, he was active in efforts to rid the unions of corruption. He made six oral arguments before this Court in the 1950s, and was on the brief in many other cases. He argued as amicus curiae in the Steel Seizure case, Youngstown Sheet & Tube Co. v Sawyer, 343 US 579 [96 L Ed 1153, 72 S Ct 863, 26 ALR2d 1378] (1952).[1]

"Arthur Goldberg was appointed Secretary of Labor by President Kennedy in 1961. Secretary Goldberg employed his superb negotiating skills to resolve labor conflicts that he regarded as jeopardizing national interests. Within 24 hours after his swearing in by Chief Justice Warren, he was on his way to New York to mediate a harbor strike. This pattern of personal mediation was repeated several times during his months as Labor Secretary.

"Arthur Goldberg was nominated by President Kennedy to succeed Justice Felix Frankfurter and sworn in on October 1, 1962. The seat he occupied is a distinguished one, having been held by Benjamin Cardozo, Oliver Wendell Holmes, and Joseph Story in addition to Justice Frankfurter. It is now held by Justice Blackmun. Soon after his appointment, the new Justice commented on the transition from life as a Secretary of Labor to life as a Supreme Court Justice:

> 'The Secretary's phone never stops ringing; the Justice's phone never rings—even his best friends won't call him.
>
> 'The Secretary . . . worries about what the President and . . . Congress will do to his carefully formulated legislative proposals; the President, the Congress, and the Secretary wonder what the Justice will do to theirs.
>
> 'The Secretary's . . . vacations are . . . interrupted by unanticipated strikes; the Justice's . . . long recess by an apparently endless flow of petitions for certiorari, difficult stay applications, and the certitude that if he vacations too obviously he will be "time charted" by Professor Hart and the editors of the Harvard Law Review.'[2]

"In his three Terms on the Court, Justice Goldberg delivered 94 opinions, including 37 opinions for the Court, 23 concurrences, and 34 dissents. His first opinion for the Court, in United States v Loew's, Inc., 371 US 38 [9 L Ed 2d 11, 83 S Ct 97] (1962), a complex antitrust case, revealed his high abilities as a judicial craftman.[3]

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[1] He also argued in United Steelworkers of America v United States, 361 US 39, 4 L Ed 2d 112, 80 S Ct 1 (1959); Hotel Employees v Sax Enterprises, Inc., 358 US 270, 3 L Ed 2d 289, 79 S Ct 273 (1959); Textile Workers v Lincoln Mills, 353 US 448, 1 L Ed 2d 972, 77 S Ct 912 (1957); NLRB v Coca-Cola Bottling Co., 350 US 264, 100 L Ed 285, 76 S Ct 383 (1956); Amalgamated Ass'n. of Street, Electric Railway & Motor Coach v Wisconsin Employment Relations Board, 340 US 383, 95 L Ed 364, 71 S Ct 359, 22 ALR2d 874 (1951). He won all but the United Steelworkers case.

[2] Reprinted in D. Moynihan, ed., The Defenses of Freedom: The Public Papers of Arthur J. Goldberg 128-129 (1964).

[3] This was the first of several antitrust opinions by Justice Goldberg. See FTC v Sun Oil Co., 371 US 505, 9 L Ed 2d 466, 83 S Ct 358 (1963); Silver v New York Stock Exchange, 373 US 341, 10 L Ed 2d 389, 83 S Ct 1246 (1963); United States v Philadelphia Nat'l. Bank, 374 US 321, 10 L Ed 2d 915, 83 S Ct 1715 (1963). Justice Goldberg also authored an opinion stating his view that the antitrust laws should not apply to collective bargaining over wages, hours, and working conditions. See 381 US 697, 14 L Ed 2d 640, 85 S Ct 1596 (opinion of Goldberg, J., in United Mine Workers v Pennington, 381 US 657, 14 L Ed

"One of Justice Goldberg's most significant opinions came later in his first Term. The Court held unconstitutional, as imposing punishment without a criminal trial, a statute providing that persons who evaded military service by remaining outside the jurisdiction of the United States in time of war would automatically be deprived of citizenship. Kennedy v Mendoza-Martinez, 372 US 144 [9 L Ed 2d 644, 83 S Ct 554] (1963). In Gibson v Florida Legislative Investigation Committee, 372 US 539 [9 L Ed 2d 929, 83 S Ct 889] (1963), Justice Goldberg's opinion for the Court held that the committee could not require the production of membership records of the NAACP absent some showing of a connection between the NAACP and the Communists activities it was investigating. His opinion for the Court the following year in Aptheker v Secretary of State, 378 US 500 [12 L Ed 2d 992, 84 S Ct 1659] (1964), held that a statute prohibiting any member of a Communist organization from applying for a passport was an unconstitutional infringement of the right to travel.

"Justice Goldberg wrote noteworthy concurring opinions in a number of other constitutional cases. In Griswold v Connecticut, 381 US 479 [14 L Ed 2d 510, 85 S Ct 1678] (1965), he expressed the view that the Ninth Amendment expanded the concept of 'liberty' in the Due Process Clauses beyond those rights specifically enumerated in the Constitution and the Bill of Rights. In New York v Sullivan, 376 US 254 [11 L Ed 2d 686, 84 S Ct 710, 95 ALR2d 1412] (1964), Justice Goldberg called for an unconditional privilege to criticize the conduct of public officials. And in Heart of Atlanta Motel v United States, 379 US 241 [13 L Ed 2d 258, 85 S Ct 348] (1964), his opinion concluded that the public accommodations provision of Civil Rights Act of 1964 was a valid exercise not only of Congress's power under the Commerce Clause, as the Court held, but under Section 5 of the Fourteenth Amendment as well.

"Many of Justice Goldberg's opinions addressed matters of criminal procedure. Draper v Washington, 372 US 487 [9 L Ed 2d 899, 83 S Ct 774] (1963), held that indigents appealing criminal convictions are entitled to a transcript or other account of the trial sufficient to permit review of their contentions on appeal. Justice Goldberg also wrote a trio of decisions concerning the sufficiency, under the Fourth Amendment, of affidavits used to obtain search warrants.[4] Justice Goldberg's dissenting opinion in United States v Barnett, 376 US 681 [12 L Ed 2d 23, 84 S Ct 984] (1964), concluded that state officials accused of disobeying orders of a federal court of appeals were entitled to a jury trial. And in a memorandum circulated to the Conference in 1963, Justice Goldberg anticipated and addressed many of the death penalty issues the Court would consider in the ensuing years.[5]

"Justice Goldberg's best-known opinion for the Court was in Escobedo v Illinois, 378 US 478 [12 L Ed 2d 977, 84 S Ct 1758] (1964). The Court held that the admission of an incriminating statement made by Escobedo during the course of police questioning violated his Sixth Amendment right to counsel. Although the Sixth Amendment analysis of the Escobedo opinion was later abandoned by the Court,[6] Justice Goldberg's reasoning foreshadowed the Court's decision two years later in Miranda v Arizona, 384 US 436 [16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974] (1966).

"Justice Goldberg also wrote several opinions in labor cases that drew on his great knowledge and expertise in this field.[7] In both NLRB v Metropolitan Insurance Co., 380 US 438 [13 L Ed 2d 951, 85 S Ct 1061] (1965) (concerning bargaining unit determinations), and American Ship Building Co. v NLRB, 380 US 300, 327 [13 L Ed 2d 855, 85 S Ct 955] (1965) (Goldberg, J., concurring in the result) (concerning lockouts), he expressed a willingness to defer to decisions

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2d 626, 85 S Ct 1585 (1965) and Amalgamated Meat Cutters v Jewel Tea Co., 381 US 676, 14 L Ed 2d 640, 85 S Ct 1596 (1965).

[4] Aguilar v Texas, 378 US 108, 12 L Ed 2d 723, 84 S Ct 1509 (1964); United States v Ventresca, 380 US 102, 13 L Ed 2d 684, 85 S Ct 741 (1965); Jaben v United States, 381 US 214, 14 L Ed 2d 345, 85 S Ct 1365 (1965) (Goldberg, J., dissenting in part).

[5] The memorandum was published in 27 S Tex L Rev 493 (1986). In Rudolph v Alabama, 375 US 889, 11 L Ed 2d 119, 84 S Ct 155 (1963), Justice Goldberg dissented from the denial of certiorari in a case presenting the question whether the death penalty for rape is cruel and unusual punishment forbidden by the Eighth Amendment. The Court addressed this question 14 years later in Coker v Georgia, 433 US 584, 53 L Ed 2d 982, 97 S Ct 2861 (1977).

[6] See Johnson v New Jersey, 384 US 719, 729, 16 L Ed 2d 882, 86 S Ct 1772 (1966); see also Kirby v Illinois, 406 US 682, 689, 32 L Ed 2d 411, 92 S Ct 1877 (1972) (plurality opinion).

[7] See Humphrey v Moore, 375 US 335, 351, 11 L Ed 2d 370, 84 S Ct 363 (1964) (Goldberg, J., concurring); Brotherhood of Locomotive Engineers v Louisville & Nashville R.R. Co., 373 US 33, 42, 10 L Ed 2d 172, 83 S Ct 1059 (1963) (Goldberg, J., dissenting).

of the National Labor Relations Board, but only so long as the Board set forth reasons for its decision and the decision was supported by substantial evidence in the record.

"In 1965, President Johnson prevailed upon Justice Goldberg to resign from the Supreme Court to succeed Adlai Stevenson as United States representative to the United Nations. In accepting the President's nomination, Justice Goldberg said that he could not 'conceal the pain with which I leave the Court . . . . It has been the richest and most satisfying period of my career.'[8] And in a letter to his fellow Justices, he said that 'only the most compelling call to duty could bring me to leave this Court . . . . But that call did come, and I could not refuse.' 382 US ix. In his new post, Ambassador Goldberg confronted many difficult issues relating to the conflict in Vietnam. He also played a role in the adoption of Security Council Resolution 242 after the 1967 war in the Middle East.

"Following his resignation from the UN post in 1968, Arthur Goldberg continued to contribute to public life as ambassador-at-large to the United Nations, chairman of the U.S. delegation to a major conference on the Helsinki human rights agreements, professor at several universities, and distinguished practicing lawyer. His final appearance before this Court was in Flood v Kuhn, 407 US 258 [32 L Ed 2d 728, 92 S Ct 2099] (1972), an antitrust challenge to professional baseball's reserve system. In 1978, he received the Medal of Freedom, the Nation's highest civilian award.

"Appearing before the Senate Judiciary Committee prior to his confirmation as a member of this Court, Arthur Goldberg said:

> 'I would regard the first function of a judge, whether he sits in a trial court or an appellate court or in our highest tribunal, to make sure as much as any human being can that he puts aside his own prejudices, predilections, viewpoints, prejudices—which we all possess—and knowing that he possesses them, try to administer justice equally under the law.'[9]

"Throughout his public life, Arthur Goldberg remained committed to the rule of law. He recognized that 'the law gives form and substance to the spirit of liberty.'[10] Justice Goldberg's tribute to Chief Justice Warren is a fitting tribute to Arthur Goldberg himself: 'He did his part in the sacred stir towards equal justice.' "[11]

"Mr. Chief Justice, on behalf of the lawyers of this Nation and, in particular, of the Bar of this Court, I respectfully request that the resolutions presented to you in honor and celebration of the memory of Justice Arthur Goldberg be accepted by the Court, and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court."

The Chief Justice said:

"Mr. Attorney General and Mr. Solicitor General, the Court thanks you on behalf of the Bar for your presentations today in memory of our late colleague and friend, Justice Goldberg.

"We ask that you convey to Chairman Wirtz and the members of the Committee on Resolutions our profound appreciation for these very appropriate resolutions. Your motion that these resolutions be made a part of the permanent record of the Court is hereby granted.

"As the Attorney General's description indicates, the career of Arthur J. Goldberg demonstrated a remarkable combination of intellectual ability and dedication to public service. I was privileged to witness a significant moment in that career in 1952, when I was serving in this Court as a law clerk to Justice Robert Jackson. The Court was hearing argument in the now famous 'Steel Seizure' case. Arthur Goldberg argued in that case as amicus curiae for the Steelworkers' Union. By common consent among a most hypercritical audience—the assembled law clerks of the Supreme Court—he did an excellent job. We were apparently accurate in our assessment of his capabilities; seven years later, when he argued again before the Court in a case which he actually subsequently lost, the Justices informed him that they had not heard any case argued more brilliantly that Term.

"Arthur Goldberg served on the Supreme Court for only three Terms before leaving to become United States Representative to the United Nations. In those three short years, as the

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[8] Reprinted in D. Moynihan, ed., The Defense of Freedom: The Public Papers of Arthur J. Goldberg xv (1964).

[9] Hearings before the Senate Comm. on the Judiciary on Nomination of Arthur J. Goldberg, of Illinois, to be Associate Justice of the Supreme Court of the United States, 87th Cong, 1st Sess 29 (1962).

[10] The Defenses of Freedom xv.

[11] Goldberg, A Tribute to Chief Justice Earl Warren, 69 Nw. U L Rev 331, 334 (1974).

Attorney General has told us, he authored several significant opinions for the Court. Perhaps even more important, however, is the outlook on constitutional law which he brought to the Court. His succession to the seat of Felix Frankfurter gave the 'Warren Court' a solid majority for an expansive reading of the Equal Protection and Due Process clauses. Justice Goldberg thereby gave his impetus to a judicial philosophy which was destined to endure beyond his rather brief tenure here.

"The first time I had the opportunity to meet Arthur Goldberg was in 1971, on the occasion of the funeral of Justice John Harlan. It was my good fortune to sit next to him on a special plane which flew members and former members of the Supreme Court to New York for the funeral. During that delightful visit he talked freely of the various public posts he had held. It was my distinct impression at that time that, although he had enjoyed all of these jobs, he liked that of Associate Justice most of all. After his return to private practice, he continued to take a lively interest in the work of the Supreme Court and the judicial process as a whole. It is fitting that he should be remembered today, in the Courtroom which was graced with his presence and among the colleagues whose lives have been enhanced through their association with him.

"Even in a country which is blessed with as many fine public servants as our own, Arthur Goldberg stands out for the remarkable combination of intellect, versatility, and dedication which he displayed. Many of us would be content to have functioned in one or maybe two of the many positions which he occupied. Arthur Goldberg brought his tremendous energy to all of them. Our country is fortunate to have been enriched by the public service of this exceptional individual."

February 19, 1991

Order Appointing Clerk of Supreme Court

It is ordered that William K. Suter be appointed Clerk of this Court to succeed Joseph F. Spaniol, Jr., effective at the commencement of business February 1, 1991, and that he take the oath of office as required by statute.

February 19, 1991

Announcement of Retirement of Former Clerk of Supreme Court

The Chief Justice said:

"I am authorized to announce the retirement of the Clerk of the Court, Mr. Joseph F. Spaniol, Jr., as of February 1, 1991. I speak for all of the members of the Court, the staff of the Court and for the Bar of the Court in thanking Mr. Spaniol for his dedicated service to the Court and in wishing him happiness and good health in the years ahead. Today's Order List includes the announcement of the appointment of William K. Suter as Clerk of the Court, effective February 1, 1991, to succeed Mr. Spaniol."

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CASES ADJUDGED

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1990

VOLUME 498 US (pp 1–end)

†

ROBERT LEE SHELL, Petitioner

v

MISSISSIPPI

498 US 1, 112 L Ed 2d 1, 111 S Ct 313

[No. 89-7279]

Decided October 29, 1990.

Decision: Trial court's limiting instruction, defining "especially heinous, atrocious, or cruel" aggravating factor in Mississippi death penalty statute, held not constitutionally sufficient.

SUMMARY

An individual who had allegedly, in the course of a robbery, struck his victim repeatedly with a tire iron and thereby caused massive injuries which resulted in the victim's death, was tried and convicted in the Circuit Court of Winston County, Mississippi on charges of capital murder. During the sentencing hearing, which ended in a jury determination that the individual should receive the death penalty, the Circuit Court instructed the jury that, in considering whether the murder was "especially heinous, atrocious, or cruel," within the terms of an aggravating factor recognized by the state's capital sentencing statute, (1) the word "heinous" meant "extremely wicked or shockingly evil"; (2) the word "atrocious" meant "outrageously wicked and vile"; and (3) the word "cruel" meant "designed to inflict a high degree of pain with indifference to, or even enjoyment of the suffering of others." In affirming the individual's death sentence, the Supreme Court of Mississippi ruled that, while the United States Supreme Court had struck down a "heinous, atrocious, or cruel" instruction in a case where there was no accompanying instruction defining those terms, the trial court in the case at hand had provided instructions which appeared adequately to define the three potential aggravating factors in terms which the average layman could understand and which were neither vague nor unclear (554 So 2d 887).

Granting leave to proceed in forma pauperis and granting certiorari, the United States Supreme Court reversed the judgment of the Supreme Court of Mississippi insofar as it relied on the "heinous, atrocious, or cruel"

aggravating factor, and remanded the case for further consideration in light of the decision in Clemons v Mississippi (1990) 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441. In a per curiam opinion expressing the views of Rehnquist, Ch. J., and White, Blackmun, Stevens, O'Connor, Scalia, Kennedy, and Souter, JJ., it was held that the limiting instruction used by the trial court below was not constitutionally sufficient.

Marshall, J., concurred in the reversal of the death sentence, expressing the view that (1) a limiting instruction can be used to give content to a statutory factor that is itself too vague to provide any guidance to the sentencer only if the instruction itself provides some guidance to the sentencer; (2) the trial court's definitions of "heinous" and "atrocious" failed this test, because they could be used by persons of ordinary sensibility to fairly characterize almost every murder; and (3) although the trial court defined "cruel" in an arguably more concrete fashion, when a case is submitted to the jury on alternative theories the unconstitutionality of any of those theories requires that the conviction or verdict be set aside.

HEADNOTE

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 951, 1692.3; Criminal Law § 93 — death penalty — aggravating factor — in forma pauperis proceedings — grant of certiorari — remand

In an individual's appeal from a state appellate court decision affirming a death sentence against the individual, the United States Supreme Court will (1) grant the individual leave to proceed in forma pauperis; (2) grant the individual's petition for a writ of certiorari; (3) reverse the state appellate court's judgment to the extent that it relied on an "especially heinous, atrocious, or cruel" aggravating factor in affirming the death sentence; and (4) remand the case to the state appellate court for reconsideration in light of Clemons v Mississippi (1990) 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441, on the ground that, although the trial court in the case used a limiting instruction to define the "especially heinous, atrocious, or cruel" factor, that instruction was not constitutionally sufficient.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21 Am Jur 2d, Criminal Law §§ 609-612, 628

9 Federal Procedure, L Ed, Criminal Procedure § 22:925

7 Am Jur Trials 477, Homicide

US L Ed Digest, Appeal §§ 910.6, 951, 1692.3; Criminal Law § 93

Index to Annotations, Appeal and Error; Capital Offenses and Punishment; Mitigation or Aggravation of Punishment; Sentence and Punishment

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Validity of death penalty, under Federal Constitution, as affected by consideration of aggravating or mitigating circumstances—Supreme Court cases. 111 L Ed 2d 947.

Supreme Court's views on constitutionality of death penalty and procedures under which it is imposed or carried out. 90 L Ed 2d 1001.

Sufficiency of evidence, for purposes of death penalty, to establish statutory aggravating circumstance that murder was heinous, cruel, depraved, or the like—post-Gregg cases. 63 ALR4th 478.

OPINION OF THE COURT

Per Curiam.

The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. To the extent that the Mississippi Supreme Court relied on the "especially heinous, atrocious, or cruel" aggravating factor in affirming petitioner's death sentence, its decision is reversed. See Maynard v Cartwright, 486 US 356, 100 L Ed 2d 372, 108 S Ct 1853 (1988). Although the trial court in this case used a limiting instruction to define the "especially heinous, atrocious, or cruel" factor, that instruction is not constitutionally sufficient. See Godfrey v Georgia, 446 US 420, 64 L Ed 2d 398, 100 S Ct 1759 (1980); Cartwright v Maynard, 822 F2d 1477, 1489-1491 (CA10 1987) (en banc), aff'd, 486 US 356, 100 L Ed 2d 372, 108 S Ct 1853 (1988). The case is remanded to the Mississippi Supreme Court for further consideration in light of Clemons v Mississippi, 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441 (1990).

It is so ordered.

SEPARATE OPINION

Justice **Marshall,** concurring.

I concur in the reversal of petitioner's death sentence. For the benefit of lower courts confronted with the issue raised in this case, I write separately to clarify what I understand the basis of this disposition to be.

Petitioner was convicted of murder and sentenced to death. He appealed his sentence on the ground that the jury had been improperly instructed to consider whether the charged murder was "especially heinous, atrocious or cruel," an aggravating factor that we deemed unconstitutionally vague in Maynard v Cartwright, 486 US 356, 361-364, 100 L Ed 2d 372, 108 S Ct 1853 (1988). The Mississippi Supreme Court affirmed. It reasoned that Maynard was distinguishable because the trial court in this case limited the "especially heinous, atrocious or cruel" factor in its charge to the jury. The instruction in question provided:

> "[T]he word heinous means extremely wicked or shockingly evil; atrocious means outrageously wicked and vile; and cruel means designed to inflict a high degree of pain with indifference to, or even enjoyment of [,] the suffering of others." 554 So 2d 887, 905-906 (Miss 1989).

These definitions, the court held, cured any constitutional deficiency in the underlying "heinous, atrocious or cruel" instruction. Id., at 906.

This conclusion was in error. The trial court in Maynard issued a supplemental instruction defining "especially heinous, atrocious or cruel" in terms nearly identical to the "limiting" instruction given in this case:

> " '[T]he term "heinous" means extremely wicked or shockingly evil; "atrocious" means outrageously wicked and vile; "cruel" means pitiless, or designed to inflict a high degree of pain, utter indifference to, or enjoyment of, the sufferings of others.' " Cartwright v Maynard, 822 F2d 1477, 1488 (CA10 1987) (en banc).

The Tenth Circuit sitting en banc held that this instruction did not cure the constitutional defect in the underlying "heinous, atrocious or cruel" instruction, see id., at 1489-1491, and, in affirming that judgment, this Court implicitly agreed.

The basis for this conclusion is not difficult to discern. Obviously, a limiting instruction can be used to give content to a statutory factor that "is itself too vague to provide any guidance to the sentencer" only if the limiting instruction's own "definitions are constitutionally sufficient," that is, only if the limiting instruction itself "provide[s] *some* guidance to the sentencer." Walton v Arizona, 497 US 639, 654, 111 L Ed 2d 511, 110 S Ct 3047 (1990). The trial court's definitions of "heinous" and "atrocious" in this case (and in Maynard) clearly fail this test; like "heinous" and "atrocious" themselves, the phrases "extremely wicked or shockingly evil" and "outrageously wicked and vile" could be used by " '[a] person of ordinary sensibility [to] fairly characterize almost *every* murder.' " Maynard v Cartwright, supra, at 363, 100 L Ed 2d 372, 108 S Ct 1853 (quoting Godfrey v Georgia, 446 US 420, 428-429, 64 L Ed 2d 398, 100 S Ct 1759 (1980) (plurality opinion)) (emphasis added). Indeed, there is no meaningful distinction between these latter formulations and the "outrageously or wantonly vile, horrible and inhuman" instruction expressly invalidated in Godfrey v Georgia, supra.

Nor is it of any consequence that the trial court defined "cruel" in an arguably more concrete fashion than "heinous" or "atrocious." Cf. Walton v Arizona, supra, at 655, 111 L Ed 2d 511, 110 S Ct 3047 (approving instruction equating "cruel" with infliction of "mental anguish or physical abuse"). "It has long been settled that when a case is submitted to the jury on alternative theories the unconstitutionality of any of the theories requires that the conviction [or verdict] be set aside." Leary v United States, 395 US 6, 31-32, 23 L Ed 2d 57, 89 S Ct 1532 (1969); see also Boyds v California, 494 US 370, 379-380, 108 L Ed 2d 316, 110 S Ct 1190 (1990) (acknowledging principle in capital sentencing context). Even assuming that the trial court permissibly defined "cruel," the instruction in this case left the jury with two constitutionally infirm, alternative

bases on which to find that petitioner committed the charged murder in an "especially heinous, atrocious *or* cruel" fashion. See Bachellar v Maryland, 397 US 564, 569-571, 25 L Ed 2d 570, 90 S Ct 1312 (1970) (condemning post hoc speculation as to which alternative ground informed jury verdict).

There is no legally tenable distinction, in sum, between this case and Maynard v Cartwright.

MEMORANDUM CASES

No. 89-1915. Bradley Arthur, Petitioner v Hillsborough County Board of Criminal Justice

498 US 801, 112 L Ed 2d 6, 111 S Ct 27.

October 1, 1990. On petition for writ of certiorari to the District Court of Appeal of Florida, Second District. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the District Court of Appeal of Florida, Second District, for further consideration in light of Howlett v Rose, 496 US 356, 110 L Ed 2d 332, 110 S Ct 2430 (1990).

Same case below, 563 So 2d 94.

No. 89-7022. Jessie Mae Stone, Petitioner v United States

498 US 801, 112 L Ed 2d 6, 111 S Ct 28.

October 1, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Hughey v United States, 495 US 411, 109 L Ed 2d 408, 110 S Ct 1979 (1990).

Same case below, 896 F2d 558.

No. 89-7271. Robert Tidwell, Petitioner v United States

498 US 801, 112 L Ed 2d 6, 111 S Ct 28.

October 1, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of Grady v Corbin, 495 US 508, 109 L Ed 2d 548, 110 S Ct 2084 (1990).

Same case below, 896 F2d 554.

No. 89-7362. Alvin Hill, Petitioner v Lee Roy Black, Commissioner, Mississippi Department of Corrections, et al.

498 US 801, 112 L Ed 2d 6, 111 S Ct 28.

October 1, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Clemons v Mississipp, 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441 (1990).

Same case below, 887 F2d 513 and 891 F2d 89.

No. 89-7665. Wallace Martin, Petitioner v Virginia

498 US 801, 112 L Ed 2d 7, 111 S Ct 28.

October 1, 1990. On petition for writ of certiorari to the Supreme Court of Virginia. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the Supreme Court of Virginia for further consideration in light of Grady v Corbin, 495 US 508, 109 L Ed 2d 548, 110 S Ct 2084 (1990).

No. 90-168. Bruce Philip Larson, Petitioner v Minnesota

498 US 801, 112 L Ed 2d 7, 111 S Ct 29.

October 1, 1990. On petition for writ of certiorari to the Supreme Court of Minnesota. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Supreme Court of Minnesota for further consideration in light of Idaho v Wright, 497 US 805, 111 L Ed 2d 638, 110 S Ct 3139 (1990).

Same case below, 453 NW2d 42.

No. 90-5045. Ricky Lee Price, Petitioner v North Carolina

498 US 802, 112 L Ed 2d 7, 111 S Ct 29.

October 1, 1990. On petition for writ of certiorari to the Supreme Court of North Carolina. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the Supreme Court of North Carolina for further consideration in light of McKoy v North Carolina, 494 US 433, 108 L Ed 2d 369, 110 S Ct 1227 (1990).

Same case below, 326 NC 56, 388 SE2d 84.

No. 89-7043. Harvey Kudler, Petitioner v Judicial Council of the Second Circuit

498 US 802, 112 L Ed 2d 7, 111 S Ct 214, reh den 498 US 1018, 112 L Ed 2d 598, 111 S Ct 595.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit is dismissed for want of jurisdiction.

No. ——. Joyce Ann Dabish, Petitioner v Chrysler Motors Corporation

498 US 802, 112 L Ed 2d 8, 111 S Ct 29.

October 1, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. ——. J. David Golub, Petitioner v University of Chicago, et al.

498 US 802, 112 L Ed 2d 8, 111 S Ct 29.

October 1, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. ——. Connell Spain, Petitioner v Metro Machines Corporation, et al.

498 US 802, 112 L Ed 2d 8, 111 S Ct 29.

October 1, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. D-808. In the Matter of Disbarment of Nicholas A. Addams

498 US 802, 112 L Ed 2d 8, 111 S Ct 30.

October 1, 1990. Disbarment order entered.

No. D-837. In the Matter of Disbarment of Frank J. Marcone

498 US 802, 112 L Ed 2d 8, 111 S Ct 30.

October 1, 1990. The motion for reinstatement to the Bar of this Court is denied without prejudice to seeking reinstatement following the completion of the proceedings before the Disciplinary Board of Pennsylvania.

No. D-905. In the Matter of Disbarment of Larry L. Hanna

498 US 802, 112 L Ed 2d 8, 111 S Ct 30.

October 1, 1990. Disbarment order entered.

No. D-907. In the Matter of Disbarment of Irvin F. Richman

498 US 802, 112 L Ed 2d 8, 111 S Ct 30.

October 1, 1990. Disbarment order entered.

No. D-908. In the Matter of Disbarment of Bernard S. Neistein

498 US 802, 112 L Ed 2d 8, 111 S Ct 30.

October 1, 1990. Disbarment order entered.

No. D-914. In the Matter of Disbarment of William W. Watkins, Sr.

498 US 802, 112 L Ed 2d 9, 111 S Ct 30.

October 1, 1990. Disbarment order entered.

No. 65, Original. State of Texas, Plaintiff v State of New Mexico

498 US 802, 112 L Ed 2d 9, 111 S Ct 30.

October 1, 1990. The Final Report of the River Master for Accounting Year 1990 is adopted. The motion of the River Master for approval of fees and expenses is granted, and the River Master is awarded $5,063.44 for the period April 1 through June 30, 1990, to be paid equally by the parties.

No. 106, Original. State of Illinois, Plaintiff v Commonwealth of Kentucky

498 US 803, 112 L Ed 2d 9, 111 S Ct 31.

October 1, 1990. The Report of the Special Master is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies, if any, may be filed by the parties within 30 days. The motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is awarded $108,838.95 for the period June 27, 1988, through July 6, 1990, to be paid equally by the parties.

No. 111, Original. State of Delaware, Plaintiff v State of New York

498 US 803, 112 L Ed 2d 9, 111 S Ct 31.

October 1, 1990. The motion of New Jersey, North Dakota, and Wyoming for leave to file a complaint in intervention is referred to the Special Master.

No. 112, Original. State of Wyoming, Plaintiff v State of Oklahoma

498 US 803, 112 L Ed 2d 9, 111 S Ct 31.

October 1, 1990. The Report of the Special Master is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies, if any, may be filed by the parties within 30 days.

No. 89-680. James B. Beam Distilling Company, Petitioner v Georgia, et al.

498 US 803, 112 L Ed 2d 9, 111 S Ct 31.

October 1, 1990. The motion of Council of State Governments, et al. for leave to file a brief as amici curiae is granted.

No. 89-1298. Ingersoll-Rand Company, Petitioner v Perry McClendon

498 US 803, 112 L Ed 2d 10, 111 S Ct 32.

October 1, 1990. The motion of respondent for divided argument is denied.

No. 89-1330. International Organization of Masters, Mates & Pilots, et al., Petitioners v Timothy A. Brown

498 US 803, 112 L Ed 2d 10, 111 S Ct 32.

October 1, 1990. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 89-1416. Air Courier Conference of America, Petitioner v American Postal Workers Union, AFL-CIO, et al.

498 US 803, 112 L Ed 2d 10, 111 S Ct 32.

October 1, 1990. The motion of respondents American Postal Workers Union, AFL-CIO, et al. to dismiss the writ for lack of jurisdiction is denied. The motion of the Acting Solicitor General for divided argument is granted.

No. 89-1452. Mobil Oil Exploration & Producing Southeast, Inc., et al., Petitioners v United Distribution Companies, et al.

No. 89-1453. Federal Energy Regulatory Commission, Petitioner v United Distribution Companies, et al.

498 US 803, 112 L Ed 2d 10, 111 S Ct 32.

October 1, 1990. The motion of petitioners for divided argument is granted.

No. 89-1541. Elizabeth Dole, Secretary of Labor, Petitioner v Occupational Safety and Health Review Commission, et al.

498 US 804, 112 L Ed 2d 10, 111 S Ct 33.

October 1, 1990. The motion of the Solicitor General to dispense with printing the joint appendix is granted. The motion of Occupational Safety and Health Review Commission for leave to participate in oral argument as amicus curiae and for divided argument is denied.

No. 89-1629. Salve Regina College, Petitioner v Sharon L. Russell

498 US 804, 112 L Ed 2d 10, 111 S Ct 33.

October 1, 1990. The motion of Ford Motor Company for leave to file a brief as amicus curiae is granted.

No. 89-1717. Florida, Petitioner v Terrance Bostick

498 US 804, 112 L Ed 2d 11, 111 S Ct 33.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted.

No. 89-1836. Dominic P. Gentile, Petitioner v State Bar of Nevada

498 US 804, 112 L Ed 2d 11, 111 S Ct 33.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1895. Astoria Federal Savings and Loan Association, Petitioner v Angelo J. Solimino

498 US 804, 112 L Ed 2d 11, 111 S Ct 33.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1905. Wisconsin Public Intervenor, et al., Petitioners v Ralph Mortier, et al.

498 US 804, 112 L Ed 2d 11, 111 S Ct 33.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1949. Edward Tilghman, et al., Petitioners v Eric Kolkhorst

498 US 804, 112 L Ed 2d 11, 111 S Ct 34.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1973. Joslyn Manufacturing Company, Petitioner v T. L. James & Company, Inc.

No. 90-69. Powerline Supply Company, Inc., et al., Petitioners v T. L. James & Company, Inc.

498 US 804, 112 L Ed 2d 11, 111 S Ct 34.

October 1, 1990. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 89-2008. Bill Clinton, Governor of Arkansas, et al., Appellants v M. C. Jeffers, et al.

498 US 804, 112 L Ed 2d 11, 111 S Ct 34.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-2026. Motor Vehicle Manufacturers Association of the United States, Inc., et al., Petitioners v Robert Abrams, Attorney General of New York

498 US 804, 112 L Ed 2d 12, 111 S Ct 34.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-34. Exxon Corporation, Petitioner v Central Gulf Lines, Inc., et al.

498 US 804, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-95. Public Utilities Commission of Ohio, et al., Petitioners v CSX Transportation, Inc., et al.

498 US 804, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-102. Liberty County, Florida, et al., Petitioners v Gregory Solomon, et al.

498 US 804, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1927. United States, Petitioner v First Federal Savings and Loan Association of Temple

498 US 805, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The motion of respondent to substitute Resolution Trust Corporation in place of First Federal Savings and Loan Association, Temple, Texas, is granted.

No. 89-5867. Shirley W. Irwin, Petitioner v Department of Veterans Affairs, et al.

498 US 805, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The motion of petitioner for divided argument is denied.

No. 89-6332. Robert S. Minnick, Petitioner v Mississippi

498 US 805, 112 L Ed 2d 12, 111 S Ct 35.

October 1, 1990. The motion of

Mississippi State Bar for leave to file an amended amicus curiae brief is granted.

No. 89-7063. Burton R. Landes, Petitioner v Robert H. Joost

498 US 805, 112 L Ed 2d 13, 111 S Ct 36.

October 1, 1990. The motion of petitioner to reconsider order denying leave to proceed in forma pauperis is denied.

No. 89-7370. Moshe Gozlon-Peretz, Petitioner v United States

498 US 805, 112 L Ed 2d 13, 111 S Ct 36.

October 1, 1990. The motion for appointment of counsel is granted, and it is ordered that Peter Goldberger, Esquire, of Philadelphia, Pennsylvania, be appointed to serve as counsel for the petitioner in this case.

No. 89-7594. Leroy Pletten, Petitioner v Constance Newman, et al.

498 US 805, 112 L Ed 2d 13, 111 S Ct 36.

October 1, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until October 22, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

Justice Marshall and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co., Inc. 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

No. 89-7826. Ruth Turner, Petitioner v District Board of Trustees of Miami-Dade Community College

498 US 805, 112 L Ed 2d 13, 111 S Ct 36.

October 1, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until October 22, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

Justice Marshall and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co., Inc. 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

No. 90-5032. Alton D. Cobb, Petitioner v City of Detroit Common Council, et al.

498 US 805, 112 L Ed 2d 14, 111 S Ct 36.

October 1, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until October 22, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

Justice Marshall and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co., Inc. 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

No. 89-1322. Oklahoma Tax Commission, Petitioner v Citizen Band Potawatomi Indian Tribe of Oklahoma

498 US 806, 112 L Ed 2d 14, 111 S Ct 37.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit granted.

Same case below, 888 F2d 1303.

No. 89-1493. Air Line Pilots Association, International, Petitioner v Joseph E. O'Neill, et al.

498 US 806, 112 L Ed 2d 14, 111 S Ct 37.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted.

Same case below, 886 F2d 1438.

No. 89-1782. David Hoffman, Commissioner, Department of Community and Regional Affairs of Alaska, Petitioner v Native Village of Noatak and Circle Village

498 US 807, 112 L Ed 2d 14, 111 S Ct 37.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 896 F2d 1157.

No. 89-1918. Robert L. McCormick, Petitioner v United States

498 US 807, 112 L Ed 2d 14, 111 S Ct 37.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted.

Same case below, 896 F2d 61.

No. 89-1940. Harold Erickson, et al., Petitioners v Maine Central Railroad Company, et al.

498 US 807, 112 L Ed 2d 15, 111 S Ct 38.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit granted.

Same case below, 898 F2d 5.

No. 90-26. Michael Barnes, Prosecuting Attorney of St. Joseph County, Indiana, et al., Petitioners v Glen Theatre, Inc., et al.

498 US 807, 112 L Ed 2d 15, 111 S Ct 38.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted.

Same case below, 904 F2d 1081.

No. 90-79. Richard B. Kay, Petitioner v Bremer Ehrler and Kentucky Board of Elections

498 US 807, 112 L Ed 2d 15, 111 S Ct 38.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted.

Same case below, 900 F2d 967.

No. 90-256. G. Russell Chambers, Petitioner v NASCO, Inc.

498 US 807, 112 L Ed 2d 15, 111 S Ct 38.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted.

Same case below, 894 F2d 696.

No. 89-1632. California, Petitioner v Hodari D.

498 US 807, 112 L Ed 2d 15, 111 S Ct 38.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, granted.

No. 89-1690. California, Petitioner v Charles Steven Acevedo

498 US 807, 112 L Ed 2d 15, 111 S Ct 39.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, granted.

Same case below, 216 Cal App 3d 586, 265 Cal Rptr 23.

No. 89-1862. Daniel J. McCarthy, Director, California Department of Corrections, Petitioner v Roulette Blair

498 US 807, 112 L Ed 2d 16, 111 S Ct 39.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 881 F2d 602 and 896 F2d 436.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 807, 112 L Ed 2d 16, 111 S Ct 39.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Ohio granted.

Same case below, 51 Ohio St 3d 22, 553 NE2d 1058.

No. 89-1647. Carnival Cruise Lines, Inc., Petitioner v Eulala Shute, et vir

498 US 807, 112 L Ed 2d 16, 111 S Ct 39.

October 1, 1990. The motion of International Committee of Passenger Lines for leave to file a brief as amicus curiae is granted. The motion of Chamber of Commerce of the United States for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 897 F2d 377.

No. 89-1799. Jeffrey M. Masson, Petitioner v New Yorker Magazine, Inc., Alfred A. Knopf, Inc., and Janet Malcolm

498 US 808, 112 L Ed 2d 16, 111 S Ct 39.

October 1, 1990. The motion of Journalists and Academics Concerned About Media Integrity for leave to file a brief as amicus curiae is granted. The motion of Mountain States Legal Foundation for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 895 F2d 1535.

No. 89-1817. County of Riverside and Cois Byrd, Sheriff of Riverside County, Petitioners v Donald Lee McLaughlin, et al.

498 US 808, 112 L Ed 2d 16, 111 S Ct 40.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted limited to Questions 1 and 3 presented by the petition.

Same case below, 888 F2d 1276.

No. 89-1838. Equal Employment Opportunity Commission, Petitioner v Arabian American Oil Company and Aramco Services Company

No. 89-1845. Ali Boureslan, Petitioner v Arabian American Oil Company and Aramaco Services Company

498 US 808, 112 L Ed 2d 17, 111 S Ct 40.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Fifth Circuit are granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 892 F2d 1271.

No. 89-1909. Feist Publications, Inc., Petitioner v Rural Telephone Service Company, Inc.

498 US 808, 112 L Ed 2d 17, 111 S Ct 40.

October 1, 1990. The motion of Association of North American Directory Publishers, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit granted limited to Question 3 presented by the petition.

Same case below, 916 F2d 718.

No. 89-1926. United States, Petitioner v Centennial Savings Bank FSB (Resolution Trust Corporation, Receiver)

498 US 808, 112 L Ed 2d 17, 111 S Ct 40.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted. The case is set for oral argument in tandem with No. 89-1965, Cottage Savings Association v Commissioner of Internal Revenue, immediately supra.

Same case below, 887 F2d 595.

No. 89-1965. Cottage Savings Association, Petitioner v Commissioner of Internal Revenue

498 US 808, 112 L Ed 2d 17, 111 S Ct 40.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted. The case is set for oral argument in tandem with No. 89-1926, United States v Centennial Savings Bank FSB.

Same case below, 890 F2d 848.

No. 89-7376. Pearly L. Wilson, Petitioner v Richard Seiter, et al.

498 US 808, 112 L Ed 2d 17, 111 S Ct 41.

October 1, 1990. Motion of petitioner for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted.

Same case below, 893 F2d 861.

No. 89-7691. Dale Robert Yates, Petitioner v Parker Evatt, Commissioner, South Carolina Department of Corrections, et al.

498 US 809, 112 L Ed 2d 18, 111 S Ct 41.

October 1, 1990. Motion of petitioner for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of South Carolina granted.

Same case below, 301 SC 214, 391 SE2d 530.

No. 89-7743. Thaddeus Donald Edmonson, Petitioner v Leesville Concrete Company, Inc.

498 US 809, 112 L Ed 2d 18, 111 S Ct 41.

October 1, 1990. Motion of petitioner for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted.

Same case below, 895 F2d 218.

No. 90-18. Robert D. Gilmer, Petitioner v Interstate/Johnson Lane Corporation

498 US 809, 112 L Ed 2d 18, 111 S Ct 41.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted limited to Question 1 presented by the petition.

Same case below, 895 F2d 195.

No. 90-29. James C. Pledger, Commissioner of Revenues of Arkansas, Petitioner v Daniel L Medlock, et al.

No. 90-38. Daniel L. Medlock, et al., Petitioners v James C. Pledger, Commissioner of Revenues of Arkansas, et al.

498 US 809, 112 L Ed 2d 18, 111 S Ct 41.

October 1, 1990. Petitions for writs of certiorari to the Supreme Court of Arkansas granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 301 Ark 483, 785 SW2d 202.

No. 90-143. Connecticut and John F. DiGiovanni, Petitioners v Brian K. Doehr

498 US 809, 112 L Ed 2d 18, 111 S Ct 42.

October 1, 1990. The motion of Connecticut Bankers Association, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 898 F2d 852, 907 F2d 17.

No. 89-1427. Herbert Pate, Petitioner v United States

498 US 809, 112 L Ed 2d 19, 111 S Ct 42.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 856 F2d 181.

No. 89-1428. Richard E. Schwartz, Petitioner v William L. Hungate, United States District Judge for the Eastern District of Missouri

498 US 809, 112 L Ed 2d 19, 111 S Ct 42.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 889 F2d 1090.

No. 89-1435. American Railway and Airway Supervisors Association, et al., Petitioners v Soo Line Railroad Company

498 US 809, 112 L Ed 2d 19, 111 S Ct 42.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 891 F2d 675.

No. 89-1505. Joan Betts Diplarakos, Petitioner v California

498 US 809, 112 L Ed 2d 19, 111 S Ct 42.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 89-1517. Kenneth Linn, Petitioner v United States

498 US 809, 112 L Ed 2d 19, 111 S Ct 43.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 889 F2d 1369.

No. 89-1566. Virginia M. Sejman, et al., Petitioners v Warner-Lambert Company, Inc.

498 US 810, 112 L Ed 2d 19, 111 S Ct 43.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 889 F2d 1346.

No. 89-1573. Alabama, Petitioner v Walter Raybon McDaniel

498 US 810, 112 L Ed 2d 19, 111 S Ct 43.

October 1, 1990. Petition for writ

of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 555 So 2d 1145.

No. 89-1582. Connecticut, et al., Petitioners v United States Merit Systems Protection Board

498 US 810, 112 L Ed 2d 20, 111 S Ct 43.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 543.

No. 89-1584. Dean Witter Reynolds, Inc., et al., Petitioners v Florabelle Coffey

498 US 810, 112 L Ed 2d 20, 111 S Ct 43.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 891 F2d 261.

No. 89-1588. Curtis L. Wrenn, Petitioner v Ohio, et al.

498 US 810, 112 L Ed 2d 20, 111 S Ct 43, reh den 498 US 993, 112 L Ed 2d 549, 11 S Ct 539.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 889 F2d 1089.

No. 89-1603. Marian F. Chew, Petitioner v California

498 US 810, 112 L Ed 2d 20, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 893 F2d 331.

No. 89-1604. Oregon State Police Officers Association, Inc., et al., Petitioners v Oregon, et al.

498 US 810, 112 L Ed 2d 20, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Oregon denied.

Same case below, 308 Or 531, 783 P2d 7.

No. 89-1605. Paul A. L. Nelson, Petitioner v Loretto L. Jones

498 US 810, 112 L Ed 2d 20, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alaska denied.

Same case below, 781 P2d 964, 1 ALR5th 1151.

No. 89-1620. Independent Insurance Agents of America, Inc., et al., Petitioners v Board of Governors of the Federal Reserve System, et al.

498 US 810, 112 L Ed 2d 21, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 890 F2d 1275.

No. 89-1622. Odeh Joseph Saleh, Petitioner v United States

498 US 810, 112 L Ed 2d 21, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 893 F2d 1335.

No. 89-1633. Cecil Arnold Odom, aka Bud Kelly, Petitioner v United States

498 US 810, 112 L Ed 2d 21, 111 S Ct 44.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 888 F2d 1014.

No. 89-1634. Steven Lyman, Petitioner v United States

498 US 810, 112 L Ed 2d 21, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 892 F2d 751.

No. 89-1640. Terry Ray Sluder, et ux., Petitioners v United Mine Workers of America, International Union, et al.

498 US 810, 112 L Ed 2d 21, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 892 F2d 549.

No. 89-1648. Sandoz Pharmaceuticals Corporation, Petitioner v United States

498 US 810, 112 L Ed 2d 21, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 825.

No. 89-1654. Alabama, Petitioner v Douglas Freeman

498 US 811, 112 L Ed 2d 22, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 553 So 2d 145.

No. 89-1656. Stephen Goot, Petitioner v United States

498 US 811, 112 L Ed 2d 22, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 894 F2d 231.

No. 89-1672. Thomas D. Powell, Petitioner v Wesley Parsons, et al.

498 US 811, 112 L Ed 2d 22, 111 S Ct 45.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 89-1675. Carl Carter, et al., Petitioners v Fred T. Goldberg, Jr., Commissioner of Internal Revenue, et al.

498 US 811, 112 L Ed 2d 22, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 909 F2d 1452.

No. 89-1683. Water Power Company, Inc., et al., Petitioners v PacifiCorp, et al.

498 US 811, 112 L Ed 2d 22, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 99 Or App 125, 781 P2d 860.

No. 89-1691. Serena Dunn, et al., Petitioners v Florida Bar, et al.

498 US 811, 112 L Ed 2d 22, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 889 F2d 1010.

No. 89-1705. Atlas Corporation, et al., Petitioners v United States

498 US 811, 112 L Ed 2d 22, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Federal Circuit denied.

Same case below, 895 F2d 745.

No. 89-1707. Vincent James Landano, Petitioner v John J. Rafferty, Superintendent, Rahway State Prison, et al.

498 US 811, 112 L Ed 2d 23, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 661.

No. 89-1708. James T. Kouno, Petitioner v Oregon State Board of Higher Education, et al.

498 US 811, 112 L Ed 2d 23, 111 S Ct 46.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 1095.

No. 89-1711. Jerry D. Smith, Petitioner v United States

498 US 811, 112 L Ed 2d 23, 111 S Ct 47.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 891 F2d 703.

No. 89-1716. Pueblo of Santo Domingo, Petitioner v Arnold J. Rael, et al.

498 US 811, 112 L Ed 2d 23, 111 S Ct 47.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-1721. John H. Cox, Petitioner v Keystone Carbon Company, et al.

498 US 811, 112 L Ed 2d 23, 111 S Ct 47.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 894 F2d 647.

No. 89-1723. John J. B. Jones, Petitioner v Baskin Flaherty Elliott & Mannino, P.C.

498 US 811, 112 L Ed 2d 23, 111 S Ct 47.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 522.

No. 89-1728. Western Fuels-Utah, Inc., Petitioner v Manuel Lujan, Jr., Secretary of the Interior

No. 89-1958. Colowyo Coal Company, et al., Petitioners v Manuel Lujan, Jr., Secretary of the Interior

498 US 811, 498 US 812, 112 L Ed 2d 24, 111 S Ct 47, 111 S Ct 48.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same cases below, 282 App DC 375, 895 F2d 780.

No. 89-1731. Todd Patterson, Petitioner v Federal Bureau of Investigation, et al.

498 US 812, 112 L Ed 2d 24, 111 S Ct 48.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 893 F2d 595.

No. 89-1734. Thomas V. Cassidy, Petitioner v Commissioner of Internal Revenue

498 US 812, 112 L Ed 2d 24, 111 S Ct 48.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 892 F2d 637.

No. 89-1735. John Pozsgai, Petitioner v United States

498 US 812, 112 L Ed 2d 24, 111 S Ct 48.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 524.

No. 89-1737. Nelson Edgar Emmens, Petitioner v United States

498 US 812, 112 L Ed 2d 24, 111 S Ct 48.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1292.

No. 89-1744. Laverna S. Bishop, Personal Representative and Sole Surviving Heir for the Estate of Alan H. Bishop, Petitioner v United States

498 US 812, 112 L Ed 2d 24, 111 S Ct 48.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Ninth Circuit denied.

Same case below, 884 F2d 582.

No. 89-1758. Gary L. Penny, Petitioner v Texas

498 US 812, 112 L Ed 2d 25, 111 S Ct 49.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fifth District, denied.

No. 89-1765. Florida Department of Labor and Employment Security, Petitioner v United States Department of Labor

498 US 812, 112 L Ed 2d 25, 111 S Ct 49.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1319.

No. 89-1770. TeleSTAR, Inc., Petitioner v Federal Communications Commission, et al.

498 US 812, 112 L Ed 2d 25, 111 S Ct 49.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same caes below, 281 App DC 24, 886 F2d 442.

No. 89-1773. Suzanne E. Gwin, Petitioner v G. D. Searle and Co.

498 US 812, 112 L Ed 2d 25, 111 S Ct 49.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 1094.

No. 89-1774. Henry F. K. Kersting, Petitioner v United States, et al.

No. 89-1775. Richard Hongsermeier, et al., Petitioners v United States

498 US 812, 112 L Ed 2d 25, 111 S Ct 49.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same cases below, 891 F2d 1407.

No. 89-1778. L. Shyrl Brown and Ila D. Brown, Petitioners v Calvin Gould, Aldon J. Anderson, and David Sam, Judges, United States District Court for the District of Utah

498 US 812, 112 L Ed 2d 25, 111 S Ct 50.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-1779. Beulah W. Booker, Petitioner v Paul E. Riley, et al.

498 US 813, 112 L Ed 2d 26, 111 S Ct 50.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 153.

No. 89-1781. Estate of James Manno and Dominick Manno, dba Astorian Manor, Petitioners v New York State Tax Commission

498 US 813, 112 L Ed 2d 26, 111 S Ct 50.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 147 App Div 2d 805, 537 NYS2d 683.

No. 89-1786. Timothy E. Russell, Petitioner v Leonard G. Dunston, Individually and as Director of the New York State Division for Youth, et al.

498 US 813, 112 L Ed 2d 26, 111 S Ct 50.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 664.

No. 89-1787. Nebraska Public Power District, Petitioner v Nucor Corporation

498 US 813, 112 L Ed 2d 26, 111 S Ct 50.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 891 F2d 1343.

No. 89-1788. Claude C. Fletcher, Petitioner v San Jose Mercury News, Inc.

498 US 813, 112 L Ed 2d 26, 111 S Ct 51.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

Same case below, 216 Cal App 3d 172, 264 Cal Rptr 699.

No. 89-1789. David Zetune, Petitioner v Elisa Agami

498 US 813, 112 L Ed 2d 26, 111 S Ct 51.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fifth District, denied.

Same case below, 774 SW2d 387.

No. 89-1790. Amy McCain, a Minor, by her Next Friend, William R. McCain, et al., Petitioners v Houston Independent School District, et al.

498 US 813, 112 L Ed 2d 27, 111 S Ct 51, reh den 498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 888 F2d 1390.

No. 89-1794. Gerald L. Schulman, Petitioner v United States

498 US 813, 112 L Ed 2d 27, 111 S Ct 51.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 1097.

No. 89-1795. Blunt, Ellis & Loewi Incorporated, John Fromm, and Peter Pfeffer, Petitioners v Ronald P. Hlavinka and Jimmie G. Davison

498 US 813, 112 L Ed 2d 27, 111 S Ct 51.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 240.

No. 89-1798. Joseph Anthony Fausto, Petitioner v United States

498 US 813, 112 L Ed 2d 27, 111 S Ct 51.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 895 F2d 1421.

No. 89-1800. Assay Partners, Petitioner v City of New York, et al.

498 US 813, 112 L Ed 2d 27, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, First Judicial Department, denied.

Same case below, 149 App Div 2d 63, 544 NYS2d 1008.

No. 89-1802. Walter Greene, Jr., Petitioner v Armco, Inc., et al.

498 US 813, 112 L Ed 2d 27, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 893 F2d 1338.

No. 89-1804. James J. Corrigan, Jr., et al., Petitioners v New York

498 US 814, 112 L Ed 2d 28, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 434, 554 NYS2d 417, 553 NE2d 965.

No. 89-1807. Ronald E. Brown, Petitioner v City of Seattle

498 US 814, 112 L Ed 2d 28, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Washington, King County, denied.

No. 89-1808. James Wilson, Petitioner v Security Insurance Company

498 US 814, 112 L Ed 2d 28, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 213 Conn 532, 569 A2d 40.

No. 89-1810. William R. Saul, Petitioner v Pennsylvania Civil Service Commission, and Department of Labor and Industry

498 US 814, 112 L Ed 2d 28, 111 S Ct 52.

October 1, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

No. 89-1811. Atlantic Richfield Company, Inc., Petitioner v Daniel Kimbro

498 US 814, 112 L Ed 2d 28, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 869.

No. 89-1813. Harry G. John, Petitioner v Erica P. John, et al.

498 US 814, 112 L Ed 2d 28, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

Same case below, 153 Wis 2d 343, 450 NW2d 795.

No. 89-1814. Gary Estep, Petitioner v Liberty Homes, Inc. and Paul Bolinsky

498 US 814, 112 L Ed 2d 28, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied.

No. 89-1815. Donna Tozzi, Petitioner v United States

498 US 814, 112 L Ed 2d 29, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 893 F2d 40.

No. 89-1816. USX Corporation, Petitioner v Elbert G. Green and Robert Danley

498 US 814, 112 L Ed 2d 29, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 896 F2d 801.

No. 89-1818. David I. Smith, Petitioner v Robert McDonald

498 US 814, 112 L Ed 2d 29, 111 S Ct 53.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 895 F2d 147.

No. 89-1819. Monica McCabe, Petitioner v Eugene A. Pelizzoni, Edward F. Lewis, Board of County Commissioners, Tulsa County, Oklahoma, and John F. Cantrell, County Treasurer of Tulsa County, Oklahoma

498 US 814, 112 L Ed 2d 29, 111 S Ct 54.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oklahoma, Third Division, denied.

No. 89-1820. Tara C. Trent, Executrix of the Estate of Patrick R. Collins, Deceased, Petitioner v United States

498 US 814, 112 L Ed 2d 29, 111 S Ct 54.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 893 F2d 846.

No. 89-1822. Jovencio F. Madarang, et al., Petitioners v Mariano R. Bermudes, Executive Director, Commonwealth Health Planning and Development Agency, et al.

498 US 814, 112 L Ed 2d 29, 111 S Ct 54.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 251.

No. 89-1824. Laura J. Harmath, Petitioner v George Goler, et al.

498 US 814, 112 L Ed 2d 30, 111 S Ct 54.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 49 Ohio St 3d 62, 550 NE2d 476.

No. 89-1827. Silas E. Counts, Petitioner v Burlington Northern Railroad Company

498 US 815, 112 L Ed 2d 30, 111 S Ct 54.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 896 F2d 424.

No. 89-1828. Timmy Dale Giltner, et al., Petitioners v United States

498 US 815, 112 L Ed 2d 30, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1334.

No. 89-1831. Walter A. Walker, Jr., Petitioner v Consumers Power Company

498 US 815, 112 L Ed 2d 30, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 896 F2d 554.

No. 89-1832. Healthcare International, Inc., et al., Petitioners v L & B Hospital Ventures, Inc., et al.

498 US 815, 112 L Ed 2d 30, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 150.

No. 89-1833. Lawrence D. Marvin, Petitioner v Grand Lodge IOOF of Nebraska, et al.

498 US 815, 112 L Ed 2d 30, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 894 F2d 1342.

No. 89-1835. Kelvin H. Keith, Petitioner v Equal Employment Opportunity Commission, et al.

498 US 815, 112 L Ed 2d 31, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 1499.

No. 89-1837. United Transportation Union, Petitioner v Grand Trunk Western Railroad Company

498 US 815, 112 L Ed 2d 31, 111 S Ct 55.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 901 F2d 489.

No. 89-1840. Kulalani, Ltd., et al., Petitioners v Lillian Hagopian Corey, et al.

498 US 815, 112 L Ed 2d 31, 111 S Ct 56.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 829.

No. 89-1842. F. Mabel Baker and Howard C. Porter, Jr., Petitioners v Mayor and City Council of Baltimore

498 US 815, 112 L Ed 2d 31, 111 S Ct 56.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 894 F2d 679.

No. 89-1846. Mark L. Schwarcz, Petitioner v Harriet B. Schwarcz

498 US 815, 112 L Ed 2d 31, 111 S Ct 56.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 378 Pa Super 170, 548 A2d 566.

No. 89-1847. Jacquelyn F. Jones, Petitioner v Turner Broadcasting System, Inc.

498 US 815, 112 L Ed 2d 31, 111 S Ct 56, reh den 498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 193 Ga App 768, 389 SE2d 9.

No. 89-1848. Claude Lewis Thoman, Petitioner v Concept, Inc.

498 US 815, 112 L Ed 2d 32, 111 S Ct 56.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1333.

No. 89-1850. George M. Horn, et ux., Petitioners v Smith & Meroney, et al.

498 US 815, 112 L Ed 2d 32, 111 S Ct 56.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 194 Ga App 298, 390 SE2d 272.

No. 89-1852. Ray Stanley Furrh, Petitioner v Sabine Towing & Transportation Company, Inc.

498 US 816, 112 L Ed 2d 32, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 526.

No. 89-1853. Frank W. Snepp, III, Petitioner v United States

498 US 816, 112 L Ed 2d 32, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 897 F2d 138.

No. 89-1856. Gregory Scarpa, Jr., Petitioner v United States

498 US 816, 112 L Ed 2d 32, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 63.

No. 89-1857. Duane Galloway, on Behalf of Sean and Kelly Galloway, Minors, Petitioners v Lorimar Motion Picture Management, Inc., et al.

498 US 816, 112 L Ed 2d 32, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Richland County, denied.

Same case below, 55 Ohio App 3d 78, 562 NE2d 949.

No. 89-1859. Albert J. DeAngelis, Petitioner v Securities and Exchange Commission

498 US 816, 112 L Ed 2d 32, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 138.

No. 89-1861. Mic Mac Nation, Petitioner v Donald James Giesler, et al.

498 US 816, 112 L Ed 2d 33, 111 S Ct 57.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

Same case below, 216 Cal App 3d 156, 264 Cal Rptr 623.

No. 89-1863. Henry and Warren Corporation, Petitioner v Cobble Hill Nursing Home, Inc., and David Axelrod, Commissioner of New York Department of Health

498 US 816, 112 L Ed 2d 33, 111 S Ct 58.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 74 NY2d 475, 548 NYS2d 920, 548 NE2d 203.

No. 89-1865. Guadalupe County, Petitioner v Lorelei Corporation

498 US 816, 112 L Ed 2d 33, 111 S Ct 58.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 895 F2d 1070.

No. 89-1866. Franklin Pierce Law Center, Petitioner v Georgetown University

498 US 816, 112 L Ed 2d 33, 111 S Ct 58.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 895 F2d 1421.

No. 89-1868. Oulo O/Y and OY Finnlines, Ltd., Petitioners v John Callen

498 US 816, 112 L Ed 2d 33, 111 S Ct 58.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 520.

No. 89-1869. Independence Blue Cross, et al., Petitioners v U. S. Healthcare, Inc., et al.

498 US 816, 112 L Ed 2d 33, 111 S Ct 58.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 914.

No. 89-1871. J. Robert Burk, Jr., Petitioner v Patricia A. Burk

498 US 816, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of New Hampshire denied.

No. 89-1875. City of Santa Ana, Petitioner v Dale Conner, et ux.

498 US 816, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 1487.

No. 89-1877. Michael Null, Petitioner v City of Lansing, Michigan

498 US 817, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 893 F2d 1334.

No. 89-1878. Mark Reiter, Petitioner v United States

498 US 817, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 639.

No. 89-1879. Michael J. Friedrich, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 817, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 829.

No. 89-1880. Consolidated Freightways, Petitioner v National Labor Relations Board

498 US 817, 112 L Ed 2d 34, 111 S Ct 59.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 282 App DC 118, 892 F2d 1052.

No. 89-1881. Jerry McDonald and Calvary Boys Ranch, Petitioners v Oklahoma ex rel. Don Roberts, District Attorney, Pittsburg County

498 US 817, 112 L Ed 2d 35, 111 S Ct 60.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oklahoma, First Division, denied.

Same case below, 787 P2d 466.

No. 89-1883. Truckee-Carson Irrigation District, et al., Petitioners v United States and Pyramid Lake Paiute Tribe of Indians

498 US 817, 112 L Ed 2d 35, 111 S Ct 60.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 887 F2d 207.

No. 89-1884. South Carolina Department of Social Services, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services, et al.

498 US 817, 112 L Ed 2d 35, 111 S Ct 60.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 147.

No. 89-1885. Thais Carriere, Individually and on Behalf of Richard Darcey Carriere, et al., Petitioners v Sears, Roebuck & Company, et al.

498 US 817, 112 L Ed 2d 35, 111 S Ct 60.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 893 F2d 98.

No. 89-1886. Roy Herberger, Trustee for Lee Optical and Associated Companies Pension Plan Trust, Petitioner v Theodore Shanbaum

498 US 817, 112 L Ed 2d 35, 111 S Ct 60.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 801.

No. 89-1887. Texas, Petitioner v Clarence Lee Brandley

498 US 817, 112 L Ed 2d 35, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 781 SW2d 886.

No. 89-1888. City of South Euclid, Petitioner v Daiva Richardson and Ronnie Richardson

498 US 817, 112 L Ed 2d 36, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 49 Ohio St 3d 147, 551 NE2d 606.

No. 89-1889. Simon J. Pinhas, Petitioner v Summit Health, Ltd., et al.

498 US 817, 112 L Ed 2d 36, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 894 F2d 1024.

No. 89-1891. Gale R. Rankin, Petitioner v Illinois

498 US 818, 112 L Ed 2d 36, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Fifth District, denied.

Same case below, 189 Ill App 3d 1116, 157 Ill Dec 977, 573 NE2d 395.

No. 89-1892. Dorothy Gonzales, Petitioner v New Mexico Educational Retirement Board, et al.

498 US 818, 112 L Ed 2d 36, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of New Mexico denied.

Same case below, 109 NM 592, 788 P2d 348.

No. 89-1894. Ceferino Coloma, Petitioner v Director, Office of Workers' Compensation Programs, et al.

498 US 818, 112 L Ed 2d 36, 111 S Ct 61.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 394.

No. 89-1896. Avondale Shipyards, Inc., Petitioner v Chester J. Orgeron, Jr., et ux.

498 US 818, 112 L Ed 2d 36, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 556 So 2d 582.

No. 89-1898. Steven Howard Oken, Petitioner v Maine

498 US 818, 112 L Ed 2d 36, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Maine, Knox County, denied.

No. 89-1899. Neil Rypkema, dba Laurel Hill Trucking Company, Petitioner v Deidre Caluri

498 US 818, 112 L Ed 2d 37, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied.

Same case below, 570 A2d 830.

No. 89-1903. Elmer Flemings, Henry McCoy, and Lee H. Reynolds, Petitioners v David Dinkins, Mayor of the City of New York, et al.

498 US 818, 112 L Ed 2d 37, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 138.

No. 89-1906. Samuel Deutsch, Petitioner v Robert G. Flannery, et al.

498 US 818, 112 L Ed 2d 37, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 883 F2d 60.

No. 89-1907. Russell F. Manfredi, Petitioner v Connecticut

498 US 818, 112 L Ed 2d 37, 111 S Ct 62.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 213 Conn 500, 569 A2d 506.

No. 89-1908. Connecticut, Petitioner v James Kristy

498 US 818, 112 L Ed 2d 37, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Connecticut denied.

Same case below, 20 Conn App 495, 568 A2d 809.

No. 89-1910. Joanne Limbach, Tax Commissioner of Ohio, Petitioner v American Home Products Corporation

498 US 818, 112 L Ed 2d 37, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 49 Ohio St 3d 158, 551 NE2d 201.

No. 89-1911. Robert C. Bell, Jr., Petitioner v John P. Lyden

498 US 818, 112 L Ed 2d 38, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

No. 89-1912. Donald Ray Brick, Petitioner v Texas

498 US 818, 112 L Ed 2d 38, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fourteenth District, denied.

No. 89-1913. Harvey Johnpoll, Petitioner v Dick Thornburgh, Attorney General of the United States

498 US 819, 112 L Ed 2d 38, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 849.

No. 89-1914. Andrew Downie, Daniel Matthews, Martin Marotta, and Charles Carroll, Petitioners v New Jersey

498 US 819, 112 L Ed 2d 38, 111 S Ct 63.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of New Jersey denied.

Same case below, 117 NJ 450, 569 A2d 242, 90 ALR4th 135.

No. 89-1916. Jeanette Verna, Petitioner v Gregory L. Coler, Secretary, Florida Department of Health and Rehabilitative Services

498 US 819, 112 L Ed 2d 38, 111 S Ct 64.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1238.

No. 89-1917. Rick Kay, et al., Petitioners v Cellar Door Productions, Inc. of Michigan

498 US 819, 112 L Ed 2d 38, 111 S Ct 64.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 1375.

No. 89-1919. Terry E. Barth, Petitioner v Jules Silver

498 US 819, 112 L Ed 2d 38, 111 S Ct 64.

October 1, 1990. Petition for writ

of certiorari to the Appellate Court of Connecticut denied.

Same case below, 20 Conn App 827, 570 A2d 243.

No. 89-1920. Ronald R. Rewald, Petitioner v United States

498 US 819, 112 L Ed 2d 39, 111 S Ct 64.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 836, 103 ALR Fed 159.

No. 89-1923. Rodney D. Hendrick, Petitioner v H. E. Avent, et al.

498 US 819, 112 L Ed 2d 39, 111 S Ct 64.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 891 F2d 583.

No. 89-1930. Oliver Curtis Powell, Petitioner v Betty T. Ellison (Powell)

498 US 819, 112 L Ed 2d 39, 111 S Ct 64.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of North Carolina denied.

Same case below, 96 NC App 275, 385 SE2d 818.

No. 89-1932. Scott A. Sealey, a Minor, by and Through his Guardian ad Litem, Carl Sealey, et al., Petitioners v Toyota Motor Corporation

498 US 819, 112 L Ed 2d 39, 111 S Ct 65.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Oregon denied.

Same case below, 309 Or 387, 788 P2d 435.

No. 89-1933. Chesapeake Publishing and Advertising, Inc., t/a The Military News, et al., Petitioners v Eastern Publishing and Advertising, Inc., t/a Armed Forces News

498 US 819, 112 L Ed 2d 39, 111 S Ct 65.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 895 F2d 971.

No. 89-1934. Raymond Francis Bayerle, Petitioner v United States

498 US 819, 112 L Ed 2d 39, 111 S Ct 65.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 28.

No. 89-1935. Kenneth Damon, Petitioner v Connecticut

498 US 819, 112 L Ed 2d 40, 111 S Ct 65.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 214 Conn 146, 570 A2d 700.

No. 89-1936. Karl Stevens, et ux., Petitioners v Tax Assessor of Maine

498 US 819, 112 L Ed 2d 40, 111 S Ct 65.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied.

Same case below, 571 A2d 1195.

No. 89-1937. Quantum Chemical Corporation, Petitioner v Distillery, Wine & Allied Workers International Union, Local Union No. 32, AFL-CIO

498 US 820, 112 L Ed 2d 40, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same came below, 894 F2d 850.

No. 89-1938. Joseph C. Kirchdorfer, et al., Petitioners v Secretary of Labor

498 US 820, 112 L Ed 2d 40, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1413.

No. 89-1939. Tri-State Motor Transit Company, Petitioner v Laura Atkinson, et al.

498 US 820, 112 L Ed 2d 40, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oklahoma, Second Division, denied.

No. 89-1941. Nancy Jane Baker, Petitioner v Lloyd W. Aubry, Jr., California State Labor Commissioner, et al.

498 US 820, 112 L Ed 2d 40, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

Same case below, 216 Cal App 3d 1259, 265 Cal Rptr 381.

No. 89-1942. Herman Bloom, and Herbert K. Fisher, Petitioners v United States; and Herbert K. Fisher, Petitioner v United States

498 US 820, 112 L Ed 2d 41, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same cases below, 898 F2d 142 (first case) and 898 F2d 143 (second case).

No. 89-1943. Larry Gene Kleasner, Petitioner v California

498 US 820, 112 L Ed 2d 41, 111 S Ct 66.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 89-1945. Laurine Brown (LaMar), Petitioner v Fox Valley & Vicinity Construction Workers Pension Fund, et al.

498 US 820, 112 L Ed 2d 41, 111 S Ct 67, reh den 498 US 993, 112 L Ed 2d 549, 11 S Ct 540.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 897 F2d 275.

No. 89-1946. Ralph Roger Bergman, Petitioner v Department of Commerce, et al.

498 US 820, 112 L Ed 2d 41, 111 S Ct 67, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-1947. John Remington Graham, Petitioner v William J. Wernz

498 US 820, 112 L Ed 2d 41, 111 S Ct 67.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Minnesota denied.

Same case below, 453 NW2d 313.

No. 89-1948. Encore Associates, Inc., et al., Petitioners v Willard C. Shiner, et ux.

498 US 820, 112 L Ed 2d 41, 111 S Ct 67.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, denied.

Same case below, 384 Pa Super 647, 551 A2d 599.

No. 89-1950. Ross A. Phillips, Petitioner v United States Department of Agriculture, Forest Service

498 US 820, 112 L Ed 2d 42, 111 S Ct 67, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 146.

No. 89-1953. American Postal Workers Union, AFL-CIO, Petitioner v United States Postal Service, et al.

498 US 820, 112 L Ed 2d 42, 111 S Ct 67.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 893 F2d 1117.

No. 89-1954. Anthony Santiago, Petitioner v United States

No. 89-7702. Jack D. Liffiton, Petitioner v United States

498 US 821, 112 L Ed 2d 42, 111 S Ct 68, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same cases below, 894 F2d 533.

No. 89-1955. Alaska Airlines, Inc., Petitioner v International Association of Machinists and Aerospace Workers, AFL-CIO, et al.

498 US 821, 112 L Ed 2d 42, 111 S Ct 68.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 896 F2d 555.

No. 89-1956. Donald Weil, General Partner, TMG II, Petitioner v United States

498 US 821, 112 L Ed 2d 42, 111 S Ct 68.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 184, 898 F2d 198.

No. 89-1957. Cecil Isbell, Charles Sullins, and Clint Core, Petitioners v Glenda Sue Smith, et al.

498 US 821, 112 L Ed 2d 42, 111 S Ct 68.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 558 So 2d 877.

No. 89-1959. Mark L. Shyres, Joseph E. Martino, and Michael A. Orloff, Petitioners v United States

498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 647.

No. 89-1961. Harry G. John, et al., Petitioners v Micahel J. Barron, Individually and as Judge of the Circuit Court of Milwaukee County, Wisconsin, et al.

498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 897 F2d 1387.

No. 89-1962. Donald W. Hannon, Petitioner v Edward J. Derwinski, Administrator of the Veterans Administration, et al.

498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 892 F2d 653.

No. 89-1963. Floyd Roberts, Petitioner v Ohio

498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

No. 89-1964. Menatsagan Melikian and Kambiz Aftassi, Petitioners v Anthony Corradetti, et al.

498 US 821, 112 L Ed 2d 43, 111 S Ct 69, reh den 498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 893 F2d 1330.

No. 89-1966. Richard A. Banks, Petitioner v H. Lawrence Garrett, III, Secretary of the Navy

498 US 821, 112 L Ed 2d 43, 111 S Ct 69, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 901 F2d 1084.

No. 89-1967. Hubert A. Burnette, Jr., Petitioner v United States

498 US 821, 112 L Ed 2d 43, 111 S Ct 70.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Military Appeals denied.

Same case below, 29 MJ 473.

No. 89-1968. Lorenzo W. Coats, Petitioner v Percy Pierre, et al.

498 US 821, 112 L Ed 2d 44, 111 S Ct 70.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 890 F2d 728.

No. 89-1969. Marie M. McMahon, Petitioner v Donald H. Kent, Judge, Circuit Court for the City of Alexandria, et al.

498 US 821, 112 L Ed 2d 44, 111 S Ct 70.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 146.

No. 89-1970. Glenn W. Carter, Petitioner v Lisa Antoci

498 US 822, 112 L Ed 2d 44, 111 S Ct 70.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 89-1971. James Guy Gish, James Michael Waggoner, and Daniel R. Martin, Petitioners v United States

498 US 822, 112 L Ed 2d 44, 111 S Ct 70.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-1975. Milton H. Juister, Petitioner v Bechtel Power Corporation

498 US 822, 112 L Ed 2d 44, 111 S Ct 70.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 893 F2d 1334.

No. 89-1976. Louis Auricchio, Jr., Petitioner v United States

498 US 822, 112 L Ed 2d 44, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 142.

No. 89-1977. George J. Lemak, Petitioner v United States

498 US 822, 112 L Ed 2d 45, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1562.

No. 89-1978. Rex A. Sharp, et al., Petitioners v Kansas

498 US 822, 112 L Ed 2d 45, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Kansas denied.

Same case below, 245 Kan 749, 783 P2d 343.

No. 89-1980. Marvin Stone, Petitioner v United States

498 US 822, 112 L Ed 2d 45, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1415.

No. 89-1981. Howard E. Williams, Petitioner v City of Northport

498 US 822, 112 L Ed 2d 45, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the Court of Civil Appeals of Alabama denied.

Same case below, 557 So 2d 1272.

No. 89-1982. John Monroe, et al., Petitioners v City of Woodville, Mississippi, et al.

498 US 822, 112 L Ed 2d 45, 111 S Ct 71.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 881 F2d 1327 and 897 F2d 763.

No. 89-1984. Frank L. Whitmer, et ux., Petitioners v John Hancock Mutual Life Insurance Company, et al. (two cases)

498 US 822, 112 L Ed 2d 45, 111 S Ct 72.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 89-1985. California Division of Apprenticeship Standards, et al., Petitioners v Hydrostorage, Inc.

498 US 822, 112 L Ed 2d 46, 111 S Ct 72.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 891 F2d 719.

No. 89-1991. Lawrence Hochheiser, Petitioner v United States

498 US 822, 112 L Ed 2d 46, 111 S Ct 72.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 1227.

No. 89-1992. Ronald Richard Aanerud, Paul Vincent Morinville, and Rhonda Rae Morinville, Petitioners v United States

498 US 822, 112 L Ed 2d 46, 111 S Ct 72.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 893 F2d 956.

No. 89-1993. Stuart A. Larsen, Petitioner v Department of the Navy

498 US 822, 112 L Ed 2d 46, 111 S Ct 72.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 899 F2d 1227.

No. 89-1994. Roland Mastandrea, et ux., Petitioners v News Herald, et al.

498 US 822, 112 L Ed 2d 46, 111 S Ct 73.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Lake County, denied.

Same case below, 65 Ohio App 3d 221, 583 NE2d 984.

No. 89-1995. Mike Sexton, Individually and as Limited Guardian of the Separate Estate of Julie Sexton, an Incapacitated Person, Petitioner v Lone Star Life Insurance Company, et al.

498 US 823, 112 L Ed 2d 46, 111 S Ct 73.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-1996. Estella Haynes Robinson, Administratrix of the Estate of Willie Robinson, Jr., et al., Petitioners v MTD Products, Inc., et al.

498 US 823, 112 L Ed 2d 46, 111 S Ct 73.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 758.

No. 89-1998. Joseph Slomnicki, Petitioner v Allegheny County Health Department

498 US 823, 112 L Ed 2d 47, 111 S Ct 73.

October 1, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

Same case below, 555 A2d 319.

No. 89-1999. Diebold, Incorporated, Petitioner v United States

498 US 823, 112 L Ed 2d 47, 111 S Ct 73.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 891 F2d 1579.

No. 89-2002. Joe A. Gamez, Petitioner v State Bar of Texas

498 US 823, 112 L Ed 2d 47, 111 S Ct 74.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied.

No. 89-2003. Massachusetts Board of Registration in Medicine, Petitioner v Lawrence Kvitka

498 US 823, 112 L Ed 2d 47, 111 S Ct 74.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 407 Mass 140, 551 NE2d 915.

No. 89-2005. Joyce Carle, Petitioner v L. F. Woods, Postmaster

498 US 823, 112 L Ed 2d 47, 111 S Ct 74.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-2006. William A. Roscoe, Petitioner v United States, et al.

498 US 823, 112 L Ed 2d 47, 111 S Ct 74, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 34.

No. 89-2009. Clift C. Lane, et ux., Petitioners v John E. Peterson, Jr., et al.

498 US 823, 112 L Ed 2d 48, 111 S Ct 74.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 899 F2d 737.

No. 89-2010. County of Albemarle, Virginia, Petitioner v William S. Smith, et al.

498 US 823, 112 L Ed 2d 48, 111 S Ct 74.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 895 F2d 953.

No. 89-2011. City Vending of Muskogee, Inc., Petitioner v Oklahoma Tax Commission

498 US 823, 112 L Ed 2d 48, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 898 F2d 122.

No. 89-2012. Willie Andre Smith, Jr., Petitioner v United States

498 US 823, 112 L Ed 2d 48, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 137.

No. 89-2014. Orthopedic Equipment Company, Inc., Petitioner v Harold Walter Pietz

498 US 823, 112 L Ed 2d 48, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 562 So 2d 152.

No. 89-2015. Sisseton-Wahpeton Sioux Tribe, et al., Petitioners v United States, et al.

498 US 824, 112 L Ed 2d 48, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 588.

No. 89-2018. Jon G. Murray, et al., Petitioners v Travis County District Court, et al.

498 US 824, 112 L Ed 2d 49, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 150.

No. 89-2019. Carl P. Scheidegg, Petitioner v Shirley Ferguson

498 US 824, 112 L Ed 2d 49, 111 S Ct 75.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of New Hampshire denied.

No. 89-2020. John Worley, Petitioner v United States

498 US 824, 112 L Ed 2d 49, 111 S Ct 76.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 68.

No. 89-2022. Mary A. Vogel, Petitioner v Mark J. Ellis (three cases)

498 US 824, 112 L Ed 2d 49, 111 S Ct 76, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Wyandot County, denied.

No. 89-2023. Bradley Richie, Petitioner v Thomas A. Coughlin, III, Individually and as Commissioner of the Department of Correctional Services, et al.

498 US 824, 112 L Ed 2d 49, 111 S Ct 76.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 148 App Div 2d 178, 544 NYS2d 230.

No. 89-2024. Jose Gerardo Munoz-Fabela, Petitioner v United States

498 US 824, 112 L Ed 2d 49, 111 S Ct 76.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 908.

No. 89-2025. Fireman's Insurance Company, et al., Petitioners v Arkansas State Claims Commission, et al.

498 US 824, 112 L Ed 2d 50, 111 S Ct 76.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 301 Ark 451, 784 SW2d 771.

No. 89-2028. Richard Lee Sands, Petitioner v Kentucky

498 US 824, 112 L Ed 2d 50, 111 S Ct 77, reh den 498 US 933, 112 L Ed 2d 550, 111 S Ct 540.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Kentucky denied.

No. 89-2030. Commissioner of Revenue Services of Connecticut, Petitioner v Cally Curtis Company

498 US 824, 112 L Ed 2d 50, 111 S Ct 77.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 214 Conn 292, 572 A2d 302.

No. 89-2031. Kuang Hsung J. Chuang, Petitioner v United States

498 US 824, 112 L Ed 2d 50, 111 S Ct 77.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 646.

No. 89-2032. Scott Kern, Jon Lester, and Jason Ladone, Petitioners v New York

498 US 824, 112 L Ed 2d 50, 111 S Ct 77.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 638, 555 NYS2d 647, 554 NE2d 1235.

No. 89-6604. Richard Strand, Petitioner v Defense Logistic Agency

498 US 824, 112 L Ed 2d 50, 111 S Ct 77.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 883 F2d 1024.

No. 89-6677. Bennie Ree White, Petitioner v United States

498 US 825, 112 L Ed 2d 50, 111 S Ct 77.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Eighth Circuit denied.

Same case below, 890 F2d 1413.

No. 89-6813. Larry Turnbull, Petitioner v United States

498 US 825, 112 L Ed 2d 51, 111 S Ct 78.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 888 F2d 636.

No. 89-6881. Jack Douglas Johnson, aka Jack O. Johnson, Petitioner v United States

498 US 825, 112 L Ed 2d 51, 111 S Ct 78.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 347.

No. 89-6943. Eddie Adair, Petitioner v United States

No. 89-7687. Victoria Toomer, Petitioner v United States

498 US 825, 112 L Ed 2d 51, 111 S Ct 78.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same cases below, 282 App DC 74, 892 F2d 90.

No. 89-6967. Kevin Burke, Petitioner v Howard L. Beyer, Administrator, New Jersey State Prison

498 US 825, 112 L Ed 2d 51, 111 S Ct 78.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7010. Howard Emmett Bramblett, Petitioner v United States

498 US 825, 112 L Ed 2d 51, 111 S Ct 78.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 889 F2d 1088.

No. 89-7025. Jim Mount, Petitioner v Melvin F. Gorelick and Roger Bartels

498 US 825, 112 L Ed 2d 51, 111 S Ct 79.

October 1, 1990. Petition for writ

of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

No. 89-7036. Brian John Tibesar, Petitioner v United States

498 US 825, 112 L Ed 2d 52, 111 S Ct 79.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 894 F2d 317.

No. 89-7136. Paul A. Miller, Petitioner v United States

498 US 825, 112 L Ed 2d 52, 111 S Ct 79.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 9, 895 F2d 1431.

No. 89-7138. Paul A. Johnson, Petitioner v United States

498 US 825, 112 L Ed 2d 52, 111 S Ct 79.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 282 App DC 404, 895 F2d 809.

No. 89-7149. Douglas Loren Marsh, Petitioner v United States

498 US 825, 112 L Ed 2d 52, 111 S Ct 79.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 89-7156. William Stone, Petitioner v Florida

498 US 825, 112 L Ed 2d 52, 111 S Ct 79.

October 1, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District, denied.

Same case below, 547 So 2d 158.

No. 89-7174. Lawrence Minton, Petitioner v Key Serve Group

498 US 825, 112 L Ed 2d 52, 111 S Ct 80.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 889 F2d 272.

No. 89-7183. Hector Hernan Hoyos, Petitioner v United States

498 US 825, 112 L Ed 2d 52, 111 S Ct 80.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 1387.

No. 89-7185. Stephen A. Hrivnak, Petitioner v New Jersey

498 US 825, 112 L Ed 2d 53, 111 S Ct 80.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 89-7195. Gustavo Vasquez, Petitioner v United States

498 US 826, 112 L Ed 2d 53, 111 S Ct 80.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 543.

No. 89-7206. Antonio Palomo, Petitioner v Washington

498 US 826, 112 L Ed 2d 53, 111 S Ct 80.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Washington denied.

Same case below, 113 Wash 2d 789, 783 P2d 575.

No. 89-7208. Charles James Thomas, Petitioner v United States

498 US 826, 112 L Ed 2d 53, 111 S Ct 80.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 893 F2d 1066.

No. 89-7215. Stephen Shendock, Petitioner v Director, Office of Workers' Compensation Programs

498 US 826, 112 L Ed 2d 53, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 893 F2d 1458.

No. 89-7241. Vangie Jones, Petitioner v United States

498 US 826, 112 L Ed 2d 53, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 893 F2d 1335.

No. 89-7248. Salvator Letizia, Petitioner v New York

498 US 826, 112 L Ed 2d 54, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Fourth Judicial Department, denied.

Same case below, 155 App Div 2d 952, 547 NYS2d 767.

No. 89-7249. Wade Johnson, Petitioner v George Alexander, Warden

498 US 826, 112 L Ed 2d 54, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1413.

No. 89-7251. Philip Casey and Rose Marie Casey, Petitioners v Jack Kemp, Secretary, Department of Housing and Urban Development

498 US 826, 112 L Ed 2d 54, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 139.

No. 89-7281. Keith Schmidt, Petitioner v Texas

498 US 826, 112 L Ed 2d 54, 111 S Ct 81.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, First District, denied.

Same case below, 778 SW2d 549.

No. 89-7282. Dan Reardon, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 826, 112 L Ed 2d 54, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 526.

No. 89-7284. Michael Wayne Butler, Petitioner v United States

498 US 826, 112 L Ed 2d 54, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 895 F2d 1016.

No. 89-7287. Leonard Nicholas, Petitioner v Louisiana

498 US 826, 112 L Ed 2d 55, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 559 So 2d 135.

No. 89-7290. David Keith Lewis, Petitioner v California

498 US 826, 112 L Ed 2d 55, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 89-7292. Robert Ralph Johnson, Petitioner v Texas

498 US 826, 112 L Ed 2d 55, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fourteenth District, denied.

Same case below, 709 SW2d 345.

No. 89-7298. Jamie Russell Davis, Petitioner v Oregon

498 US 827, 112 L Ed 2d 55, 111 S Ct 82.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 98 Or App 752, 780 P2d 807.

No. 89-7300. Arthur Britton, Sr., Petitioner v Central Bank

498 US 827, 112 L Ed 2d 55, 111 S Ct 83.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, Second Circuit, denied.

Same case below, 552 So 2d 508.

No. 89-7319. Daniel De Nardo, Petitioner v Alaska

498 US 827, 112 L Ed 2d 55, 111 S Ct 83.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alaska denied.

No. 89-7320. Joseph Giarratano, Johnny Watkins, Jr., and Richard T. Boggs, Petitioners v Edward W. Murray, Director, Virginia Department of Corrections, et al.

498 US 827, 112 L Ed 2d 55, 111 S Ct 83.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

No. 89-7328. Douglas McCourt, Petitioner v California

498 US 827, 112 L Ed 2d 56, 111 S Ct 83.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

No. 89-7336. Stanley Mose Cardine, Petitioner v Al Parke, Warden

498 US 827, 112 L Ed 2d 56, 111 S Ct 83, reh den 498 US 1008, 112 L Ed 2d 579, 111 S Ct 572.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 879 F2d 864.

No. 89-7345. Donald Rossbach, Petitioner v United States

498 US 827, 112 L Ed 2d 56, 111 S Ct 83.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 701 F2d 713.

No. 89-7348. Eloy Tello, Petitioner v California

498 US 827, 112 L Ed 2d 56, 111 S Ct 84.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of California, Fourth Appellate District, denied.

No. 89-7349. Winston Willis, Petitioner v First Bank National Association

498 US 827, 112 L Ed 2d 56, 111 S Ct 84, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

No. 89-7354. Robert Donald Stigler, Petitioner v United States

498 US 827, 112 L Ed 2d 56, 111 S Ct 84.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 151.

No. 89-7357. Freddie Rogers, Petitioner v Illinois

498 US 827, 112 L Ed 2d 56, 111 S Ct 84.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 133 Ill 2d 1, 139 Ill Dec 714, 549 NE2d 226.

No. 89-7366. Jessie Rutledge, Petitioner v Bob Martinez, Governor of Florida, et al.

498 US 827, 112 L Ed 2d 57, 111 S Ct 84.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 558 So 2d 19.

No. 89-7383. William Frank Meyer, Petitioner v Zeigler Coal Company, et al.

498 US 827, 112 L Ed 2d 57, 111 S Ct 84.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 894 F2d 902.

No. 89-7405. David Starks, Petitioner v Illinois

498 US 827, 112 L Ed 2d 57, 111 S Ct 85.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Second District, denied

Same case below, 190 Ill App 3d 503, 137 Ill Dec 447, 546 NE2d 71.

No. 89-7406. William Allen Turner, Petitioner v United States

498 US 827, 112 L Ed 2d 57, 111 S Ct 85.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 143.

No. 89-7411. Joseph Vail, Petitioner v United States

498 US 828, 112 L Ed 2d 57, 111 S Ct 85.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 21.

No. 89-7413. Hollis Wesley Shaw, Petitioner v United States

498 US 828, 112 L Ed 2d 57, 111 S Ct 85.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 689.

No. 89-7414. Gary Silvers, Petitioner v United States

498 US 828, 112 L Ed 2d 57, 111 S Ct 85.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 891 F2d 287.

No. 89-7425. Paul Smith, Petitioner v United States

498 US 828, 112 L Ed 2d 58, 111 S Ct 85.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 149.

No. 89-7432. Logan E. Combs, Petitioner v United States, et al.

498 US 828, 112 L Ed 2d 58, 111 S Ct 86.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 89-7436. George Polchlopek, Petitioner v United States

498 US 828, 112 L Ed 2d 58, 111 S Ct 86.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 997.

No. 89-7439. Edgar Perry, Petitioner v Donald Rice, Secretary of the Air Force

498 US 828, 112 L Ed 2d 58, 111 S Ct 86.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 883 F2d 69.

No. 89-7456. Maurice Hunley, Petitioner v Illinois

498 US 828, 112 L Ed 2d 58, 111 S Ct 86.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 189 Ill App 3d 24, 136 Ill Dec 664, 545 NE2d 188.

No. 89-7464. Robert Turner, Petitioner v Oklahoma

498 US 828, 112 L Ed 2d 58, 111 S Ct 86.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

Same case below, 786 P2d 1251.

No. 89-7477. Bobbie Lee Adams, III, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 828, 112 L Ed 2d 59, 111 S Ct 86, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 89-7478. Stanley Grochowski, Petitioner v Hoyt C. Cupp, Superintendent, Oregon State Penitentiary

498 US 828, 112 L Ed 2d 59, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 83.

No. 89-7479. Elon Kevan Rowlee, Petitioner v United States

498 US 828, 112 L Ed 2d 59, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 1275.

No. 89-7480. Charlie Coleman White, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 828, 112 L Ed 2d 59, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7481. Joyce H. Gibson, Petitioner v Thomas E. Moore, et al.

498 US 828, 112 L Ed 2d 59, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 251.

No. 89-7482. Joyce H. Gibson, Petitioner v Ralph C. Clontz, Jr., et al.

498 US 828, 112 L Ed 2d 59, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 251.

No. 89-7484. Joseph Nathaniel Brown, Jr., Petitioner v United States

498 US 828, 112 L Ed 2d 60, 111 S Ct 87.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 1368.

No. 89-7486. Susan Strout, Petitioner v Vermont

498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Vermont denied.

No. 89-7487. Victor Woodard, Petitioner v Thomas Coughlin, et al.

498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7488. Michael Wright, Petitioner v United States, et al.

498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7489. Franklin L. Green, Petitioner v Bruce N. Lynn, Secretary, Louisiana Department of Corrections

498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7490. Ervin Earl Rutter, Petitioner v United States

498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 897 F2d 1558.

No. 89-7493. Eugene L. Goad, Petitioner v Terry L. Morris, Warden

498 US 829, 112 L Ed 2d 60, 111 S Ct 88, reh den 498 US 993, 112 L Ed 2d 551, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 887 F2d 1087.

No. 89-7495. John K. W. Bondzie, Petitioner v Woodley and Simon, et al.

498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Virginia, City of Richmond, denied.

No. 89-7502. Jerlene Abbott, Petitioner v Claiborne Parish School Board

498 US 829, 112 L Ed 2d 61, 111 S Ct 89, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, Second Circuit, denied.

Same case below, 550 So 2d 294.

No. 89-7511. Richardo Martinez, Petitioner v O. I. White, Warden, and United States Parole Commission

498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1414.

No. 89-7513. Clyde Michael Morgan, Petitioner v United States

498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 257.

No. 89-7517. Alton J. Bailey, Petitioner v Ryan Stevedoring Company, Inc., et al.

498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 157.

No. 89-7520. Robert Wright, Petitioner v Oregon

498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Oregon denied.

Same case below, 309 Or 37, 785 P2d 340.

No. 89-7521. Herbert Sims, Petitioner v Hans Walker, Superintendent, Auburn Correctional Facility

498 US 829, 112 L Ed 2d 61, 111 S Ct 90.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 137.

No. 89-7525. Huey Wright, Petitioner v Raymon Rodriguez

498 US 829, 112 L Ed 2d 62, 111 S Ct 90.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7526. Kenneth W. Evans, Petitioner v United States Postal Service, et al.

498 US 830, 112 L Ed 2d 62, 111 S Ct 90, reh den 498 US 994, 112 L Ed 2d 551, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 891 F2d 294.

No. 89-7527. Stanley Ferryman, Petitioner v United States

498 US 830, 112 L Ed 2d 62, 111 S Ct 90.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 897 F2d 584.

No. 89-7530. Stanley Robert Murrell, Petitioner v United States Postal Service

498 US 830, 112 L Ed 2d 62, 111 S Ct 90.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 892 F2d 1051.

No. 89-7534. Michael W. McRae, Petitioner v Maryland

498 US 830, 112 L Ed 2d 62, 111 S Ct 90, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 146.

No. 89-7535. Patrick J. Mullen, Petitioner v Larry Smith

498 US 830, 112 L Ed 2d 62, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7536. Betty Jean Klacsmann, Petitioner v Jess Parish Hospital

498 US 830, 112 L Ed 2d 63, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 89-7537. Paul Harris, Petitioner v United States

498 US 830, 112 L Ed 2d 63, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1114.

No. 89-7540. John Winston, Petitioner v United States

498 US 830, 112 L Ed 2d 63, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 85, 896 F2d 1383.

No. 89-7541. Arthur Nickens, Petitioner v George T. Lewis

498 US 830, 112 L Ed 2d 63, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 154.

No. 89-7542. Clifford D. Noe, Petitioner v United States

498 US 830, 112 L Ed 2d 63, 111 S Ct 91.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 888 F2d 1383.

No. 89-7543. Gary Leonard Camp, Petitioner v Virginia

498 US 830, 112 L Ed 2d 63, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Virginia, Pulaski County, denied.

No. 89-7546. Michael Allen Kosek, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 830, 112 L Ed 2d 63, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied.

Same case below, 896 F2d 557.

No. 89-7547. Nicholas Marlow, Petitioner v New York City Board of Examiners

498 US 830, 112 L Ed 2d 64, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 138.

No. 89-7548. Robert Edward Hausman, Petitioner v United States

498 US 830, 112 L Ed 2d 64, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 686.

No. 89-7549. Roderick Robinson, Petitioner v United States

498 US 830, 112 L Ed 2d 64, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 89-7550. Nolan Redden Egger, Petitioner v United States

498 US 831, 112 L Ed 2d 64, 111 S Ct 92.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 159.

No. 89-7551. Lawrence Patrick Trenier, Petitioner v Eddie Myers, Warden, et al.

498 US 831, 112 L Ed 2d 64, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 89-7554. Amos Ratcliff, Petitioner v James Rowland, Director, California Department of Corrections

498 US 831, 112 L Ed 2d 64, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 89-7555. Felix A. Pagan Centeno, Petitioner v Rafael A. Lopez, et al.

498 US 831, 112 L Ed 2d 65, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Puerto Rico, Centro Judicial de San Juan, denied.

No. 89-7558. Ronald Rogers-Bey, Petitioner v Kenneth McGinnis, Director, Illinois Department of Corrections

498 US 831, 112 L Ed 2d 65, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 279.

No. 89-7559. Charles Taylor, Petitioner v First Bank of Indiantown

498 US 831, 112 L Ed 2d 65, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District, denied

Same case below, 555 So 2d 865.

No. 89-7561. Jesus Sud, Petitioner v United States

498 US 831, 112 L Ed 2d 65, 111 S Ct 93.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 889 F2d 1029.

No. 89-7564. Douglas Wayne Brown, Petitioner v United States

498 US 831, 112 L Ed 2d 65, 111 S Ct 94.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 894 F2d 1341.

No. 89-7565. Chester L. Davidson-El, Petitioner v United States Department of Justice, et al.

498 US 831, 112 L Ed 2d 65, 111 S Ct 94.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7569. Charles C. Brewington, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 831, 112 L Ed 2d 66, 111 S Ct 94.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 551.

No. 89-7571. Billie Jo Dotson, Petitioner v United States

498 US 831, 112 L Ed 2d 66, 111 S Ct 94.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 263.

No. 89-7572. Norman Keith Chase, Petitioner v Oregon, et al.

498 US 831, 112 L Ed 2d 66, 111 S Ct 94.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

No. 89-7574. Ronald Pryor, Petitioner v Deborah Allen

498 US 831, 112 L Ed 2d 66, 111 S Ct 94, reh den 498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 894 F2d 1341.

No. 89-7576. Ruth Molina-Iguado, Petitioner v United States

498 US 831, 112 L Ed 2d 66, 111 S Ct 95.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1452.

No. 89-7578. Bernard Harris, Petitioner v Thomas J. Burdorff

498 US 831, 112 L Ed 2d 66, 111 S Ct 95, reh den 498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1413.

No. 89-7582. Ralph Lepiscopo, Petitioner v Mark Hopwood, et al.

498 US 832, 112 L Ed 2d 66, 111 S Ct 95.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of New Mexico denied.

Same case below, 110 NM 72, 792 P2d 49.

No. 89-7583. Percy Jones, Petitioner v Eddie Meyers, Warden

498 US 832, 112 L Ed 2d 67, 111 S Ct 95.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 883.

No. 89-7584. Wilbur E. Cook, Petitioner v United States

498 US 832, 112 L Ed 2d 67, 111 S Ct 95, reh den 498 US 1075, 112 L Ed 2d 865, 111 S Ct 805.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 89-7586. Kenneth Wayne Ballard, Petitioner v Oklahoma

498 US 832, 112 L Ed 2d 67, 111 S Ct 95.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 89-7587. Clarence Greathouse, Jr., Petitioner v Ronald Marshall, Warden

498 US 832, 112 L Ed 2d 67, 111 S Ct 95.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 896 F2d 553.

No. 89-7591. Louis Pina, Petitioner v Massachusetts

498 US 832, 112 L Ed 2d 67, 111 S Ct 96.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 406 Mass 540, 549 NE2d 106.

No. 89-7592. Derrick Townsend, Petitioner v United States

498 US 832, 112 L Ed 2d 67, 111 S Ct 96.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 72, 896 F2d 599.

No. 89-7593. James Harmon, III, Petitioner v Tom L. Barton, Superintendent, Florida State Prison, et al.

498 US 832, 112 L Ed 2d 68, 111 S Ct 96.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 894 F2d 1268.

No. 89-7595. David Gomez, Petitioner v United States

No. 89-7602. Dan Martinez, Petitioner v United States

498 US 832, 112 L Ed 2d 68, 111 S Ct 96.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7598. George C. Jackson, Petitioner v Department of Transportation

498 US 832, 112 L Ed 2d 68, 111 S Ct 97.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 892 F2d 1050.

No. 89-7599. Larry Dornell Harrison, Petitioner v M.L. Stallings, et al.

498 US 832, 112 L Ed 2d 68, 111 S Ct 97.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 145.

No. 89-7603. Robert Leppaluoto, et ux., Petitioners v United States

498 US 832, 112 L Ed 2d 68, 111 S Ct 97, reh den 498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 891 F2d 295.

No. 89-7604. Manuel S.P., Petitioner v California

498 US 832, 112 L Ed 2d 68, 111 S Ct 97.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 215 Cal App 3d 48, 263 Cal Rptr 447.

No. 89-7607. Russell Walker, Petitioner v People Express Airlines, Inc., et al.

498 US 832, 112 L Ed 2d 68, 111 S Ct 97.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 143.

No. 89-7609. James Riley, Petitioner v John Sullivan, et al.

498 US 833, 112 L Ed 2d 69, 111 S Ct 97.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7610. Clifton Franklin, Petitioner v Paul D. Caspari, Superintendent, Missouri Eastern Correctional Center

498 US 833, 112 L Ed 2d 69, 111 S Ct 98.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1572.

No. 89-7613. Pearly Wilson, Petitioner v George Wilson, et al.

498 US 833, 112 L Ed 2d 69, 111 S Ct 98.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 89-7614. Doris E. Wyatt, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 833, 112 L Ed 2d 69, 111 S Ct 98, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 542.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 89-7615. Winston Willis, Petitioner v First Bank National Association

498 US 833, 112 L Ed 2d 69, 111 S Ct 98, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 541 and reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

No. 89-7618. Alvin Martin, Petitioner v United States

498 US 833, 112 L Ed 2d 69, 111 S Ct 98.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 282 App DC 255, 893 F2d 1404.

No. 89-7623. Andres Valdez, Petitioner v Jim Brittain, Superintendent, Arkansas Valley Correctional Facility, et al.

498 US 833, 112 L Ed 2d 70, 111 S Ct 98.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7625. John Melvin Aylett, Petitioner v California

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

No. 89-7626. Tony Victor Bunion, Petitioner v United States

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1114.

No. 89-7627. David Earl Vidaurri, Petitioner v United States

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 89-7628. Domingo Gonzales, Petitioner v New York

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 938, 555 NYS2d 681, 554 NE2d 1269.

No. 89-7629. Joseph W. Maugeri, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 892 F2d 87.

No. 89-7633. Jerome Chipp, Petitioner v New York

498 US 833, 112 L Ed 2d 70, 111 S Ct 99.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 327, 553 NYS2d 72, 552 NE2d 608.

No. 89-7637. Jackson Rip Holmes, Petitioner v James G. Genco, et al.

498 US 833, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7641. Michael Owen Brannan, Petitioner v United States

498 US 833, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 107.

No. 89-7642. Charles Stringer, II, Petitioner v J. T. Johnson, et al.

498 US 834, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 89-7643. Jeffery Vaughn, Petitioner v Donald Boswell, Sheriff

498 US 834, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Virginia, Henrico County, denied.

No. 89-7644. Robert W. Jager, Petitioner v Lafayette Township, et al.

498 US 834, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 888 F2d 1380.

No. 89-7647. Alan McFadden, Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary

498 US 834, 112 L Ed 2d 71, 111 S Ct 100.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Mississippi, Fourth District, Sunflower County, denied.

No. 89-7648. Arthur Nickens, Petitioner v City of Marks, et al.

498 US 834, 112 L Ed 2d 71, 111 S Ct 101.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1111.

No. 89-7649. Douglas Ray Harrell, Petitioner v United States

498 US 834, 112 L Ed 2d 72, 111 S Ct 101.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 120.

No. 89-7652. Danny R. Hollingsworth, Petitioner v Supreme Court of Nevada

498 US 834, 112 L Ed 2d 72, 111 S Ct 101, reh den 498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 1026, 835 P2d 43.

No. 89-7653. Steven Linder, Petitioner v Donald T. Vaughn, Superintendent, State Correctional Institution at Graterford

498 US 834, 112 L Ed 2d 72, 111 S Ct 101.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7654. Larry Ray McCoy, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 834, 112 L Ed 2d 72, 111 S Ct 101.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 89-7655. Charles E. Littlejohn, Petitioner v Georgia

498 US 834, 112 L Ed 2d 72, 111 S Ct 101.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

No. 89-7656. Ahmad Jamahl A., Petitioner v Los Angeles County Superior Court

498 US 834, 112 L Ed 2d 72, 111 S Ct 102.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

Same case below, 215 Cal App 3d 528, 263 Cal Rptr 747.

No. 89-7657. Edward Whiddon, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 834, 112 L Ed 2d 73, 111 S Ct 102.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 894 F2d 1266.

No. 89-7658. William Douglas Brown, Petitioner v Billy McWherter, Warden

498 US 834, 112 L Ed 2d 73, 111 S Ct 102.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 407.

No. 89-7663. Johnny Lee Frazier, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 834, 112 L Ed 2d 73, 111 S Ct 102.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 559 So 2d 1121.

No. 89-7668. John Wayne Harris, Petitioner v Alumax Mill Products, Inc., et al.

498 US 835, 112 L Ed 2d 73, 111 S Ct 102.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 400.

No. 89-7669. James L. Martin, Petitioner v United States Department of Education, et al.

498 US 835, 112 L Ed 2d 73, 111 S Ct 102, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 89-7674. Robert Williams, Petitioner v Henry L. Solano, Acting Executive Director, Colorado Department of Corrections

498 US 835, 112 L Ed 2d 73, 111 S Ct 103.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7675. John Pimental, Petitioner v United States

498 US 835, 112 L Ed 2d 73, 111 S Ct 103.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 544.

No. 89-7676. John Diehl, Petitioner v United States

498 US 835, 112 L Ed 2d 74, 111 S Ct 103.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 89-7678. Annell Saucier and Billy Joe Woods, Petitioners v United States

498 US 835, 112 L Ed 2d 74, 111 S Ct 103.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 12.

No. 89-7681. John David Strong, Petitioner v James Blutcher, et al.

498 US 835, 112 L Ed 2d 74, 111 S Ct 103.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 873 F2d 299.

No. 89-7685. Johnny Ray Basham, Petitioner v Oklahoma

498 US 835, 112 L Ed 2d 74, 111 S Ct 103.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 89-7686. Raymond K. Evans, Petitioner v United States

498 US 835, 112 L Ed 2d 74, 111 S Ct 104.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 15.

No. 89-7689. Kevin Morris Elrod, Petitioner v United States

498 US 835, 112 L Ed 2d 74, 111 S Ct 104.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 60.

No. 89-7692. Phillip Brannon Courtney, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 835, 112 L Ed 2d 75, 111 S Ct 104.

October 1, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Third District, denied.

Same case below, 561 So 2d 607.

No. 89-7694. Harry Albert Green, Petitioner v United States

498 US 835, 112 L Ed 2d 75, 111 S Ct 104.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 89-7695. Jack Frost, Petitioner v California

498 US 835, 112 L Ed 2d 75, 111 S Ct 104, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ of certiorari to the Appellate Department, Superior Court of California, Los Angeles County, denied.

No. 89-7696. Wayne Hislop, Petitioner v United States

498 US 835, 112 L Ed 2d 75, 111 S Ct 104.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 148.

No. 89-7697. Kamal B. Mahdavi, Petitioner v Central Intelligence Agency

498 US 835, 112 L Ed 2d 75, 111 S Ct 105.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 156.

No. 89-7698. In Re Kamal B. Mahdavi, Petitioner

498 US 836, 112 L Ed 2d 75, 111 S Ct 105.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 19.

No. 89-7699. Gary Lee McColpin, Petitioner v Clark V. Owens

498 US 836, 112 L Ed 2d 75, 111 S Ct 105, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7700. James L. Martin, Petitioner v Joseph J. Farnan, Jr.

498 US 836, 112 L Ed 2d 76, 111 S Ct 105, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 445.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7701. Michael Morton, Petitioner v Michigan

498 US 836, 112 L Ed 2d 76, 111 S Ct 105.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Michigan denied.

Same case below, 434 Mich 881, 462 NW2d 749.

No. 89-7703. Phyllis Maltby, Petitioner v Utah Non-Profit Housing Corp., et al.

498 US 836, 112 L Ed 2d 76, 111 S Ct 105.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7704. Dianl McGuire, Petitioner v Illinois

498 US 836, 112 L Ed 2d 76, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 188 Ill App 3d 1107, 157 Ill Dec 204, 571 NE2d 1223.

No. 89-7705. Franklin Delano Moore, Petitioner v United States

498 US 836, 112 L Ed 2d 76, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 89-7706. Henk Visser, Petitioner v United States Court of Appeals for the District of Columbia Circuit

498 US 836, 112 L Ed 2d 76, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 89-7707. John Story, Petitioner v Wyoming

498 US 836, 112 L Ed 2d 76, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Wyoming denied.

Same case below, 788 P2d 617.

No. 89-7708. Jerald James Ayers, Sidney Wayne Bishop, and Jimmy Steven Jilek, Petitioners v United States

498 US 836, 112 L Ed 2d 77, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 894 F2d 981.

No. 89-7710. Autrey J. Locklear, Petitioner v Delaware, et al.

498 US 836, 112 L Ed 2d 77, 111 S Ct 106.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Delaware denied.

Same case below, 577 A2d 753.

No. 89-7711. Mike Francisco Alvarez, aka Mike Frank Alvarez, Petitioner v United States

498 US 836, 112 L Ed 2d 77, 111 S Ct 107.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1225.

No. 89-7712. Ernie Benitez, Petitioner v Arizona

498 US 836, 112 L Ed 2d 77, 111 S Ct 107.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied.

No. 89-7713. Donovan Jerome Scott, Petitioner v Richard Singleton, Warden

498 US 836, 112 L Ed 2d 77, 111 S Ct 107.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 255.

No. 89-7714. Gary Stedman, Petitioner v Farm Credit Bank of St. Paul, et al.

498 US 836, 112 L Ed 2d 77, 111 S Ct 107.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of North Dakota denied.

Same case below, 453 NW2d 830.

No. 89-7715. Luis Olivier, Petitioner v United States

498 US 837, 112 L Ed 2d 77, 111 S Ct 107.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 894 F2d 41.

No. 89-7717. Leo F. Dermota, Petitioner v United States

498 US 837, 112 L Ed 2d 78, 111 S Ct 107.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 895 F2d 1324.

No. 89-7718. Joseph Garaventi, Petitioner v Board of Review, et al.

498 US 837, 112 L Ed 2d 78, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 89-7720. Linda Lou German, Petitioner v United States

498 US 837, 112 L Ed 2d 78, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 148.

No. 89-7721. Napoleon Foster, Petitioner v Illinois

498 US 837, 112 L Ed 2d 78, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 190 Ill App 3d 1018, 138 Ill Dec 311, 547 NE2d 478.

No. 89-7723. Manuel Ruan-Esparza, Petitioner v United States

498 US 837, 112 L Ed 2d 78, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 89-7725. Leonard Vickers, Petitioner v United Parcel Service, Inc.

498 US 837, 112 L Ed 2d 78, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 155.

No. 89-7726. Dwight Purk, Petitioner v United States, et al.

498 US 837, 112 L Ed 2d 79, 111 S Ct 108.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1414.

No. 89-7727. Hector Fernandez, Petitioner v United States

498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 33.

No. 89-7728. Collin Lee Quick, Petitioner v United States.

498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 84.

No. 89-7729. Robert Edward Ross, Petitioner v Minnesota

498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Minnesota denied.

Same case below, 451 NW2d 231.

No. 89-7733. Tim E. Conley, Petitioner v Phillip R. Johnson

498 US 837, 112 L Ed 2d 79, 111 S Ct 109, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 445.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Washington, Division 3, denied.

No. 89-7734. Ernest A. Cowden, Petitioner v United States

498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7735. Delbert Bowling, Petitioner v United States

498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 926.

No. 89-7736. William Cooper, Petitioner v Jackson County Department of Corrections, et al.

498 US 837, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 89-7737. Norman Keith Chase, Petitioner v Oregon

498 US 837, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

No. 89-7738. Hiram Ash, Petitioner v Ronald Mackin, et al.

498 US 838, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

No. 89-7739. Sharon Elliott, Petitioner v Washington

498 US 838, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Washington denied.

Same case below, 114 Wash 2d 6, 785 P2d 440.

No. 89-7741. Joel Gregory Arnold, Petitioner v Texas

498 US 838, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 786 SW2d 295.

No. 89-7742. Lorenzo Bendingfield, Petitioner v Al C. Parke, Warden, et al.

498 US 838, 112 L Ed 2d 80, 111 S Ct 110.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1221.

No. 89-7744. James Edward Anderson, Petitioner v Robert G. Borg, Warden, et al.

498 US 838, 112 L Ed 2d 80, 111 S Ct 111, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 89-7746. Theresa Mulqueen Skeeter, Petitioner v City of Norfolk, et al.

498 US 838, 112 L Ed 2d 81, 111 S Ct 111, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 147.

No. 89-7747. Raymond Snell, Petitioner v City and County of Denver, et al.

498 US 838, 112 L Ed 2d 81, 111 S Ct 111, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7748. Thurman Harlem Jones, Petitioner v United States

498 US 838, 112 L Ed 2d 81, 111 S Ct 111.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 898 F2d 1461.

No. 89-7749. Phillip Reginald Higginbotham, Petitioner v Theodore Koehler, Warden

498 US 838, 112 L Ed 2d 81, 111 S Ct 111.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1221.

No. 89-7750. William Stillwell and William Stevens, Petitioners v United States

498 US 838, 112 L Ed 2d 81, 111 S Ct 111.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1104.

No. 89-7751. Gerald Lucas, Petitioner v United States

498 US 838, 112 L Ed 2d 81, 111 S Ct 112.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 606.

No. 89-7756. Charles Thompson, Petitioner v United States

498 US 838, 112 L Ed 2d 81, 111 S Ct 112.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 659.

No. 89-7757. Harry Van Dyke, Petitioner v United States; and Kevin Plummer, Petitioner v United States

498 US 838, 112 L Ed 2d 82, 111 S Ct 112.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same cases below, 895 F2d 984 (first case) and 902 F2d 1567 (second case).

No. 89-7758. Ina Sowell, Petitioner v United States

498 US 838, 112 L Ed 2d 82, 111 S Ct 112.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 1368.

No. 89-7759. Clotilda Rains, Petitioner v United States

498 US 838, 112 L Ed 2d 82, 111 S Ct 112.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 842.

No. 89-7760. Lawrence Petitta, Petitioner v United States

498 US 839, 112 L Ed 2d 82, 111 S Ct 112.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1226.

No. 89-7761. Kimothy Ross, Petitioner v United States

498 US 839, 112 L Ed 2d 82, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 260.

No. 89-7762. Thomas Grant, Petitioner v Barry Gaither, Warden

498 US 839, 112 L Ed 2d 82, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 266.

No. 89-7763. Donald Rogers, Petitioner v United States

498 US 839, 112 L Ed 2d 83, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 899 F2d 917.

No. 89-7764. Walter Trayer, Petitioner v United States

498 US 839, 112 L Ed 2d 83, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 208, 898 F2d 805.

No. 89-7765. Donald Althoff, Petitioner v United States

498 US 839, 112 L Ed 2d 83, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 147.

No. 89-7766. William Baylies and Peter Andresen, Petitioners v Prince George's County, Maryland, et al.

498 US 839, 112 L Ed 2d 83, 111 S Ct 113.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 249.

No. 89-7767. Doris Culver, Petitioner v County of Rensselaer, New York, et al.

498 US 839, 112 L Ed 2d 83, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7769. Mark John Jones, Petitioner v Michigan

498 US 839, 112 L Ed 2d 83, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Michigan denied.

No. 89-7770. Darryl James McGlamry, Petitioner v United States

498 US 839, 112 L Ed 2d 84, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 148.

No. 89-7771. Clayton Manning, Petitioner v Crispus Nix, Warden

498 US 839, 112 L Ed 2d 84, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 901 F2d 671.

No. 89-7772. Isiah James, II, Petitioner v Grady A. Wallace, Commissioner, South Carolina Department of Probation, Parole, and Pardon Services, et al.

498 US 839, 112 L Ed 2d 84, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 252.

No. 89-7774. Colen Neale Isenhower Hoffman, Petitioner v Edward L. Cohn, Superintendent, Indiana State Reformatory

498 US 839, 112 L Ed 2d 84, 111 S Ct 114.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 89-7776. Dean Ray Henderson, Petitioner v California

498 US 839, 112 L Ed 2d 84, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

No. 89-7778. Brenda Collier, Petitioner v R. H. Dowden, et al.

498 US 839, 112 L Ed 2d 84, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 89-7780. Charles Evans, Petitioner v United States

498 US 840, 112 L Ed 2d 84, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 902 F2d 959.

No. 89-7783. James Blackmon, Petitioner v United States

498 US 840, 112 L Ed 2d 85, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 155.

No. 89-7784. Lloyd Ratliff, Petitioner v United States

498 US 840, 112 L Ed 2d 85, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 893 F2d 161.

No. 89-7790. Robert Harding, Petitioner v Donald Allen, Commissioner, Maine Department of Corrections, et al.

498 US 840, 112 L Ed 2d 85, 111 S Ct 115.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 907 F2d 142.

No. 89-7791. Shawn Milne, Petitioner v New Jersey

498 US 840, 112 L Ed 2d 85, 111 S Ct 116.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 89-7792. William Mark Piotrowski, Petitioner v Minnesota

498 US 840, 112 L Ed 2d 85, 111 S Ct 116.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Minnesota denied.

Same case below, 453 NW2d 689.

No. 89-7794. Claude L. Huard, Petitioner v United States

498 US 840, 112 L Ed 2d 85, 111 S Ct 116.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1575.

No. 89-7795. Earnestine Mack, Petitioner v United States

No. 89-7811. Albert Ray Macklin, Petitioner v United States

498 US 840, 112 L Ed 2d 86, 111 S Ct 116.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same cases below, 900 F2d 948.

No. 89-7796. Adam Klein, Petitioner v New York

498 US 840, 112 L Ed 2d 86, 111 S Ct 116.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 156 App Div 2d 385, 548 NYS2d 337.

No. 89-7797. Anibal Maldonado, Petitioner v Daniel Senkowski, Superintendent, Clinton Correctional Facility

498 US 840, 112 L Ed 2d 86, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7798. Joseph Jefferson, Petitioner v James E. Johnson, Warden, et al.

498 US 840, 112 L Ed 2d 86, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1529.

No. 89-7799. Darrin Henry, Petitioner v New York

498 US 840, 112 L Ed 2d 86, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

No. 89-7800. Lisa M. Moore, Petitioner v Sharon Ficquette, et al.

498 US 840, 112 L Ed 2d 86, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 89-7801. James Lewis, Petitioner v United States

498 US 840, 112 L Ed 2d 86, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 877.

No. 89-7802. Bennie Earl Hudson, Petitioner v United States

498 US 840, 112 L Ed 2d 87, 111 S Ct 117.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 89-7803. Robert Heath Pope, Petitioner v Alabama

498 US 841, 112 L Ed 2d 87, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 562 So 2d 131.

No. 89-7804. Naor David Arbel, Petitioner v Turgeon Restaurants of Niagara Falls, Inc.

498 US 841, 112 L Ed 2d 87, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Fourth Judicial Department, denied.

Same case below, 155 App Div 2d 1003, 548 NYS2d 835.

No. 89-7805. Alex Ray Bailey, Petitioner v Maryland

498 US 841, 112 L Ed 2d 87, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 319 Md 392, 572 A2d 544.

No. 89-7807. John Wilder, Petitioner v Florida

498 US 841, 112 L Ed 2d 87, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Second District, denied.

Same case below, 560 So 2d 791.

No. 89-7808. James Earl Williams, Petitioner v James Chrans, Warden

498 US 841, 112 L Ed 2d 87, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 37.

No. 89-7809. David Guillermo Sarti-Tinoco, Petitioner v United States

498 US 841, 112 L Ed 2d 88, 111 S Ct 118.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 13.

No. 89-7810. Deborah Herron, Petitioner v United States

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 263.

No. 89-7812. Jerry R. Milton, Petitioner v Carl Yingst, et al.

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 89-7813. George Monore Hederson, Petitioner v Arthur Tate, Warden

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 153.

No. 89-7814. Eugenia Amparo Osorio, Petitioner v United States

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 900 F2d 247.

No. 89-7815. Reginald Locklear, Petitioner v United States

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 257.

No. 89-7816. Tyrone Breckenridge, Petitioner v United States

498 US 841, 112 L Ed 2d 88, 111 S Ct 119.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 540.

No. 89-7817. James L. Martin, Petitioner v Joseph J. Farnan, Jr.

498 US 841, 112 L Ed 2d 89, 111 S Ct 120, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7818. William A. MacGuire, Petitioner v Alan Rasmussen

498 US 841, 112 L Ed 2d 89, 111 S Ct 120, reh den 498 US 963, 112 L Ed 2d 408, 111 S Ct 399.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 253.

No. 89-7819. Lee Christensen, Petitioner v City of Monticello

498 US 841, 112 L Ed 2d 89, 111 S Ct 120.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Utah denied.

Same case below, 788 P2d 513, 129 Utah Adv Rep 5.

No. 89-7820. Jesse Williams, Petitioner v United States

498 US 842, 112 L Ed 2d 89, 111 S Ct 120.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 260.

No. 89-7821. Charmaine Lolita Petit, Petitioner v California

498 US 842, 112 L Ed 2d 89, 111 S Ct 120.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 89-7822. Annie Green, et al., Petitioners v Law Firm of Wiseman, Blackburn, Futrell and Cohen, et al.

498 US 842, 112 L Ed 2d 89, 111 S Ct 120, reh den 498 US 1075, 112 L Ed 2d 865, 111 S Ct 805.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

No. 89-7823. Faris Abdul-Matiyn, Petitioner v City of New York, et al.

498 US 842, 112 L Ed 2d 89, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 89-7824. Mark Williams, Petitioner v United States

498 US 842, 112 L Ed 2d 90, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7825. Stacey Sellers, Petitioner v Walt B. Echols, Warden

498 US 842, 112 L Ed 2d 90, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 154.

No. 89-7827. William Rigney, Petitioner v United States

498 US 842, 112 L Ed 2d 90, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 30.

No. 89-7829. Lawrence Weychert, Petitioner v Pennsylvania Department of Public Welfare

498 US 842, 112 L Ed 2d 90, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

Same case below, 122 Pa Cmwlth 6, 551 A2d 605.

No. 89-7830. Enrique Bugarin, Petitioner v Texas

498 US 842, 112 L Ed 2d 90, 111 S Ct 121.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Eighth District, denied.

No. 89-7831. Melinda Petree, Petitioner v United States

498 US 842, 112 L Ed 2d 90, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 526.

No. 89-7832. Joyce Gibson, Petitioner v Marvin Hoffman, et al.

498 US 842, 112 L Ed 2d 90, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1565.

No. 89-7834. Mylon Cross, Petitioner v Illinois

498 US 842, 112 L Ed 2d 91, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 1099.

No. 89-7836. Randel Steven Reasoner, Petitioner v Robert Corbin, Attorney General of Arizona, et al.

498 US 842, 112 L Ed 2d 91, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1225.

No. 89-7837. Norbert Schueller, Petitioner v TRW, Inc., et al.

498 US 842, 112 L Ed 2d 91, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 1046.

No. 89-7840. Alvin Gene Washington, Petitioner v United States

498 US 842, 112 L Ed 2d 91, 111 S Ct 122.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 439.

No. 89-7841. Stanley Lewis Perkins, Petitioner v George Petsock, Superintendent, State Correctional (and Diagnostic and Classification Center) at Pittsburgh, et al.

498 US 843, 112 L Ed 2d 91, 111 S Ct 123.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1218.

No. 89-7843. Ray Stamey, Petitioner v Georgia

498 US 843, 112 L Ed 2d 91, 111 S Ct 123, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 194 Ga App 305, 390 SE2d 409.

No. 89-7844. Wayne Sinclair, Petitioner v United States

498 US 843, 112 L Ed 2d 92, 111 S Ct 123.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1557.

No. 89-7845. Barbara Villarrubia, Petitioner v United States Postal Service, et al.

498 US 843, 112 L Ed 2d 92, 111 S Ct 123.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7846. J. B. Pease, Petitioner v Steve Hargett, Warden

498 US 843, 112 L Ed 2d 92, 111 S Ct 123.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7847. Michael Sindram, Petitioner v N. Richard Kimmel Properties, et al.

498 US 843, 112 L Ed 2d 92, 111 S Ct 123, reh den 498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

No. 89-7848. Michael Sindram, Petitioner v Washington Suburban Sanitary Commission

498 US 843, 112 L Ed 2d 92, 111 S Ct 124, reh den 498 US 974, 112 L Ed 2d 428, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Maryland, Montgomery County, denied.

No. 89-7849. James Patton, Petitioner v United States

498 US 843, 112 L Ed 2d 92, 111 S Ct 124.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 157.

No. 89-7850. Humberto Duque, Petitioner v United States

498 US 843, 112 L Ed 2d 92, 111 S Ct 124.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1064.

No. 89-7851. Robert Morris Cochran, Petitioner v Mary A. Conroy, et al.

498 US 843, 112 L Ed 2d 93, 111 S Ct 124.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 89-7852. Kevin Thomas Ford, Petitioner v United States

498 US 843, 112 L Ed 2d 93, 111 S Ct 124.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 35.

No. 89-7853. Lewis James Danforth, Petitioner v Wisconsin

498 US 843, 112 L Ed 2d 93, 111 S Ct 124.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

No. 89-7854. John Bradin, Petitioner v C. A. Turner, Warden, et al.

498 US 843, 112 L Ed 2d 93, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 89-7855. Kenneth Gray, Petitioner v Larry Smith, Warden

498 US 843, 112 L Ed 2d 93, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7856. Donald Hurley, Petitioner v United States

498 US 843, 112 L Ed 2d 93, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1217.

No. 89-7857. Kenneth Braddock, Petitioner v United States

498 US 844, 112 L Ed 2d 93, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 897 F2d 300.

No. 89-7858. Woodrow Wilson Miles, Petitioner v United States

498 US 844, 112 L Ed 2d 94, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 547.

No. 89-7859. Dulce Hernandez-Garcia, Petitioner v United States

498 US 844, 112 L Ed 2d 94, 111 S Ct 125.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 901 F2d 875.

No. 89-7860. Oswald John, Petitioner v Immigration and Naturalization Service, et al.

498 US 844, 112 L Ed 2d 94, 111 S Ct 126.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 89-7861. James Willie Hart, Petitioner v Oklahoma

498 US 844, 112 L Ed 2d 94, 111 S Ct 126.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 89-7862. Kevin Harvey, Petitioner v United States

498 US 844, 112 L Ed 2d 94, 111 S Ct 126.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 89-7864. Frank Noble, Petitioner v John Sullivan, Warden, et al.

498 US 844, 112 L Ed 2d 94, 111 S Ct 126.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1575.

No. 89-7865. Zeron Lewis, Petitioner v Daniel Vasquez, Warden

498 US 844, 112 L Ed 2d 94, 111 S Ct 126, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 446.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1417.

No. 89-7866. Wilbert L. Nubine, Petitioner v Oklahoma

498 US 844, 112 L Ed 2d 95, 111 S Ct 126.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 89-7868. Angelo Mario Ceccato, Petitioner v California

498 US 844, 112 L Ed 2d 95, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 89-7869 Ramon Rodriguez-Gonzalez, Petitioner v United States

498 US 844, 112 L Ed 2d 95, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 177.

No. 89-7870. Lynda Gail Brewer and Theresa K. Evans, Petitioners v United States

498 US 844, 112 L Ed 2d 95, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 503.

No. 89-7871. Sharon Campbell, Petitioner v Ingersoll Milling Machine Co., et al.

498 US 844, 112 L Ed 2d 95, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 893 F2d 925.

No. 89-7872. Ralph A. Hosch, Petitioner v United States

498 US 844, 112 L Ed 2d 95, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 89-7874. Paul F. Lamb, Petitioner v Dewey Sowders, Warden

498 US 844, 112 L Ed 2d 96, 111 S Ct 127.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1222.

No. 89-7875. James Gaines, Petitioner v United States

498 US 844, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1562.

No. 89-7876. Christie L. Linton, Petitioner v United States

498 US 845, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 15.

No. 89-7877. Walter M. McCarty, Petitioner v United States

498 US 845, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 704.

No. 89-7878. Daniel E. Langston, et ux., Petitioners v Robert E. Dodson, et al.

498 US 845, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7879. Jesse Hatch, Petitioner v Illinois

498 US 845, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 190 Ill App 3d 1004, 138 Ill Dec 643, 547 NE2d 1264.

No. 89-7881. Michael Smallen, Petitioner v United States

498 US 845, 112 L Ed 2d 96, 111 S Ct 128.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 149.

No. 89-7883. Raphael Rhamon Johnson, Petitioner v United States

498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 41.

No. 89-7885. Frank Evan Zenner, Petitioner v T. S. Powers, et al.

498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-2. Marshall P. Safir, Petitioner v Prudential Insurance Company of America, et al.

498 US 845, 112 L Ed 2d 97, 111 S Ct 129, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-3. Howard L. Wolf, Petitioner v United States

498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 869 F2d 1288.

No. 90-5. Chicago Housing Authority, et al., Petitioners v Triad Associates, Inc., dba Guardian Security, et al.

498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 892 F2d 583.

No. 90-6. Block 173 Associates, Petitioner v City and County of Denver, et al.

498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 900 F2d 1434.

No. 90-7. Alan Belcher, Petitioner v United States

498 US 845, 112 L Ed 2d 98, 111 S Ct 130.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 158.

No. 90-8. Curtis L. Wrenn, Petitioner v Board of Directors, Whitney M. Young, Jr., Health Center, Inc., et al.

498 US 845, 112 L Ed 2d 98, 111 S Ct 130, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 891 F2d 278.

No. 90-10. Samuel S. Granito, Petitioner v United States

No. 90-46. Gennaro Angiulo, Francesco Angiulo, Donato Angiulo, and Michele Angiulo, Petitioners v United States

498 US 845, 112 L Ed 2d 98, 111 S Ct 130.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the First Circuit denied.

Same cases below, 897 F2d 1169.

No. 90-11. Paul A. Arguello, Petitioner v United States

498 US 846, 112 L Ed 2d 98, 111 S Ct 130.

October 1, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 219.

No. 90-12. Richard E. Rounds, Jr., Petitioner v United States

498 US 846, 112 L Ed 2d 98, 111 S Ct 130.

October 1, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 76.

No. 90-14. Robert Bruce Reckmeyer, Petitioner v United States

498 US 846, 112 L Ed 2d 98, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 257.

No. 90-15. Ian Gordon, Petitioner v United States

498 US 846, 112 L Ed 2d 98, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fourth Circuit denied.

Same case below, 895 F2d 932.

No. 90-16. Shenandoah Baptist Church, Petitioner v Elizabeth Dole, Secretary of Labor, et al.

498 US 846, 112 L Ed 2d 99, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 899 F2d 1389.

No. 90-17. Brotherhood of Railway Carmen (Division of T.C.U.), et al., Petitioners v Atchison, Topeka & Santa Fe Railway Company

498 US 846, 112 L Ed 2d 99, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1463.

No. 90-19. Lisa Jones, Petitioner v United States

498 US 846, 112 L Ed 2d 99, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 900 F2d 512.

No. 90-21. John Martinson, Petitioner v Farm Credit Bank of St. Paul, fka Federal Land Bank of St. Paul

498 US 846, 112 L Ed 2d 99, 111 S Ct 131.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of North Dakota denied.

Same case below, 453 NW2d 816.

No. 90-22. Levester Thompson, Petitioner v Wise General Hospital, et al.

498 US 846, 112 L Ed 2d 99, 111 S Ct 132.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 547.

No. 90-23. Food Chemical News, Inc., et al., Petitioners v James Benson, Acting Commissioner, Food and Drug Administration

498 US 846, 112 L Ed 2d 99, 111 S Ct 132.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 344, 900 F2d 328.

No. 90-24. Greenspan, Jaffe & Rosenblatt, et al., Petitioners v Sara Lee Corporation

498 US 846, 112 L Ed 2d 100, 111 S Ct 132.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 900 F2d 522.

No. 90-27. Wallace E. Heck, Sr., et al., Petitioners v Mark E. Anderson, et al.

498 US 846, 112 L Ed 2d 100, 111 S Ct 132.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, First Circuit, denied.

Same case below, 554 So 2d 695.

No. 90-28. William C. Newton, Petitioner v W. R. Grace & Company, et al.

498 US 846, 112 L Ed 2d 100, 111 S Ct 132.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 877 F2d 973.

No. 90-30. Bertha H. Williams, Petitioner v Robert A. Mosbacher, Secretary of Commerce

498 US 847, 112 L Ed 2d 100, 111 S Ct 133.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 258.

No. 90-31. Gary W. Cross, et ux., Individually and as Administrators of the Estate of Their Minor Child, Darren B. Cross, Petitioners v Shell Oil Company

498 US 847, 112 L Ed 2d 100, 111 S Ct 133.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 871 F2d 118.

No. 90-32. Secretary of State of Florida, et al., Petitioners v Diann Walker, et al.

498 US 847, 112 L Ed 2d 100, 111 S Ct 133.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1189.

No. 90-33. Corning Natural Gas Corporation, Petitioner v North Penn Gas Company

498 US 847, 112 L Ed 2d 101, 111 S Ct 133.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 687.

No. 90-35. Hilary Foretich, Petitioner v Lifetime Cable, et al.

498 US 847, 112 L Ed 2d 101, 111 S Ct 133.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-37. Julian Malcomson, Petitioner v United States

498 US 847, 112 L Ed 2d 101, 111 S Ct 133.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 68.

No. 90-39. Richard C. Frazier, Petitioner v Ohio

498 US 847, 112 L Ed 2d 101, 111 S Ct 134.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Medina County, denied.

No. 90-40. Patricia C. Foster, et vir, Petitioners v Michael Stein, et ux.

498 US 847, 112 L Ed 2d 101, 111 S Ct 134.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 557 So 2d 861.

No. 90-42. Clift C. Lane, Trustee, et al., Petitioners v William B. Sullivan, et al.

498 US 847, 112 L Ed 2d 101, 111 S Ct 134.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 900 F2d 1247.

No. 90-48. Phillip Seelig, et al., Petitioners v Richard J. Koehler, Correction Commissioner of the City of New York, et al.

498 US 847, 112 L Ed 2d 102, 111 S Ct 134.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 87, 556 NYS2d 832, 556 NE2d 125.

No. 90-49. Leland L. Lockard, et ux., Petitioners v Missouri Pacific Railroad Company, et al.

No. 90-117. Missouri Pacific Railroad Company, Petitioner v Rosella Ray, dba Rosella Ray's Boarding House, et al.

498 US 847, 112 L Ed 2d 102, 111 S Ct 134, 111 S Ct 135.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same cases below, 894 F2d 299.

No. 90-52. Aluminum Company of America, Petitioner v James E. Alm

498 US 847, 112 L Ed 2d 102, 111 S Ct 135.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied.

Same case below, 785 SW2d 137.

No. 90-53. Jerry Tucker, Petitioner v Owen Bieber, et al.

498 US 848, 112 L Ed 2d 102, 111 S Ct 135.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 973.

No. 90-55. Illinois Wine & Spirits Co., Petitioner v County of Cook, Bureau of Administration, et al.

498 US 848, 112 L Ed 2d 102, 111 S Ct 135.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 191 Ill App 3d 924, 139 Ill Dec 31, 548 NE2d 416.

No. 90-57. United States Fidelity and Guaranty Company, and Lewis O. Funkhouser, Petitioners v St. John Mortgage Company, Inc.

498 US 848, 112 L Ed 2d 102, 111 S Ct 135.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 1266.

No. 90-58. Michael Lynn Smith, Petitioner v United States

498 US 848, 112 L Ed 2d 103, 111 S Ct 135, reh den 498 US 994, 112 LEd 2d 553, 111 S Ct 544.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 564.

No. 90-59. Steward Caskie, Petitioner v Glenn R. Hechinger

498 US 848, 112 L Ed 2d 103, 111 S Ct 136.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 890 F2d 202.

No. 90-60. Union Texas Petroleum Corporation, et al., Petitioners v State Service Company, Inc., et al.

498 US 848, 112 L Ed 2d 103, 111 S Ct 136.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 895 F2d 1043.

No. 90-62. Joseph Manzo, et al., Petitioners v Michael Manzo, et al.

498 US 848, 112 L Ed 2d 103, 111 S Ct 136.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-63. Floramerica, S.A., et al., Petitioners v United States

498 US 848, 112 L Ed 2d 103, 111 S Ct 136.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 901 F2d 1089.

No. 90-64. Ruben L. Allman, Petitioner v Westmoreland Coal Company

498 US 848, 112 L Ed 2d 103, 111 S Ct 136.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 144.

No. 90-65. Gary Glass, Transferee, et al., Petitioners v Commissioner of Internal Revenue

498 US 848, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 33.

No. 90-67. Ray C. Buckner, Petitioner v City of Highland Park, Michigan, et al.

498 US 848, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 901 F2d 491.

No. 90-72. Judy C. Brown, et vir, Individually and as Next Friends of Reider P. M. Brown, a Minor, and Reise G. L. Brown, a Minor, Deceased, Petitioners v Andy Granatelli, as Trustee of Tuneup Masters, Inc., Employee Benefit Plan, et al.

498 US 848, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 1351.

No. 90-74. Barbara Jackson, Petitioner v Harvard University, et al.

498 US 848, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 900 F2d 464.

No. 90-75. Reuben J. Barton, et al., Petitioners v Creasey Company of Clarksburg, et al.

498 US 849, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 249.

No. 90-77. Clinchfield Coal Company, Petitioner v Federal Mine Safety and Health Review Commission, et al.

498 US 849, 112 L Ed 2d 104, 111 S Ct 137.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 282 App DC 368, 895 F2d 773.

No. 90-78. Adobe Western and Casual, Inc., Petitioner v Louisiana (Through Department of Revenue and Taxation)

498 US 849, 112 L Ed 2d 105, 111 S Ct 138.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, First Circuit, denied.

No. 90-81. W. David Weston, Petitioner v Jeffrey G. Banks, et al.

498 US 849, 112 L Ed 2d 105, 111 S Ct 138.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 896 F2d 1557.

No. 90-82. Video News, Inc., Petitioner v Texas

498 US 849, 112 L Ed 2d 105, 111 S Ct 138.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, First District, denied.

Same case below, 781 SW2d 411.

No. 90-83. Mark N. Smith, Petitioner v Roosevelt County, Montana, et al.

498 US 849, 112 L Ed 2d 105, 111 S Ct 138.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Montana denied.

Same case below, 242 Mont 27, 788 P2d 895.

No. 90-85. William Howard Cross, Sr., Petitioner v United States

498 US 849, 112 L Ed 2d 105, 111 S Ct 138.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1287.

No. 90-86. Earlene Polyak, Petitioner v Jim Hamilton, Judge, Chancery Court of Lawrence County, Tennessee

498 US 849, 112 L Ed 2d 105, 111 S Ct 139, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Tennessee, Middle Division, denied.

No. 90-87. Joseph M. Ward, Petitioner v Hillhaven, Inc., et al.

498 US 849, 112 L Ed 2d 105, 111 S Ct 139.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of North Carolina denied.

Same case below, 97 NC App 143, 388 SE2d 246.

No. 90-88. Helen Peterson, Petitioner v King Tree Center, Inc.

498 US 849, 112 L Ed 2d 106, 111 S Ct 139.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 896 F2d 1369.

No. 90-91. Peter Boylan, John E. Carey, Thomas J. Connolly, Matthew A. Kilroe, John F. McCormick, Kenneth J. Nave, and Francis X. Sheehan, Petitioners v United States

498 US 849, 112 L Ed 2d 106, 111 S Ct 139.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 898 F2d 230.

No. 90-92. American Petroleum Institute, Petitioner v United States Environmental Protection Agency, et al.

498 US 849, 112 L Ed 2d 106, 111 S Ct 139.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 280 App DC 338, 886 F2d 355.

No. 90-94. Florida Department of Labor and Employment Security, Petitioner v United States

498 US 849, 112 L Ed 2d 106, 111 S Ct 139.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 902 F2d 959.

No. 90-100. R. O. Segraves, Petitioner v Ralph M. Parsons Company, et al.

498 US 850, 112 L Ed 2d 106, 111 S Ct 140.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-101. Ziba Bennett Phelps, III, Petitioner v Gerald M. O'Donnell, Trustee

498 US 850, 112 L Ed 2d 106, 111 S Ct 140.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 254.

No. 90-103. Pennhurst State School & Hospital, et al., Petitioners v Terri Lee Halderman, et al.

498 US 850, 112 L Ed 2d 107, 111 S Ct 140.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 901 F2d 311.

No. 90-104. John M., Petitioner v Paula T., et al.

498 US 850, 112 L Ed 2d 107, 111 S Ct 140.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

Same case below, 524 Pa 306, 571 A2d 1380, 87 ALR4th 555.

No. 90-105. M. Wiley Catlett, Petitioner v John R. Lively, et al.

498 US 850, 112 L Ed 2d 107, 111 S Ct 140.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 12.

No. 90-106. Lois Morales, Petitioner v Kansas State University, et al.

498 US 850, 112 L Ed 2d 107, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Kansas denied.

Same case below, 246 Kan xxviii, 790 P2d 947.

No. 90-108. S. Ezra Austern, et ux., Petitioners v Chicago Board Options Exchange, Inc.

498 US 850, 112 L Ed 2d 107, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 882.

No. 90-109. Sam Ferris, Petitioner v County of Santa Clara, et al.

498 US 850, 112 L Ed 2d 107, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 891 F2d 715.

No. 90-110. Frank A. Romeo, Petitioner v United States

498 US 850, 112 L Ed 2d 108, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1556.

No. 90-111. Jean Woerner, Petitioner v Harry Brunt and Michael Farren

498 US 850, 112 L Ed 2d 108, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Law Division, Middlesex County, denied.

No. 90-115. Michelle Donia, Petitioner v Cerebral Palsy Collingswood Activity Center, aka Cerebral Palsy Adult Activity Center, et al.

498 US 850, 112 L Ed 2d 108, 111 S Ct 141.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-116. Delbert Neil Helm, dba Bills Green Light Auto Parts, Petitioner v Mid-America Industries, Inc.

498 US 850, 112 L Ed 2d 108, 111 S Ct 142, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 545.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 301 Ark 521, 785 SW2d 209.

No. 90-118. Keith Milton Rhinehart, et al., Petitioners v KIRO, Inc., et al.

498 US 850, 112 L Ed 2d 108, 111 S Ct 142.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Washington, Division 1, denied.

No. 90-122. Bryant James Saldivar, Petitioner v California

498 US 850, 112 L Ed 2d 108, 111 S Ct 142.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-123. Lisa Reeves Wilson, et vir, Petitioners v Brooke Darrow, Individually and In Her Official Capacity as an Employee of the Cabinet for Human Resources, et al.

498 US 851, 112 L Ed 2d 108, 111 S Ct 142.

October 1, 1990. Petition for writ

of certiorari to the Court of Appeals of Kentucky denied.

No. 90-124. Hyde Athletic Industries, Inc., et al., Petitioners v Michael J. Badalamenti

498 US 851, 112 L Ed 2d 109, 111 S Ct 142.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 896 F2d 1359.

No. 90-126. Stephen Gajdos, Petitioner v United States

498 US 851, 112 L Ed 2d 109, 111 S Ct 142.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-127. International Association of Machinists & Aerospace Workers, Lodge No. 1777, Petitioner v Fansteel, Inc.

498 US 851, 112 L Ed 2d 109, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1005.

No. 90-128. Michael Greb, et al., Petitioners v Universal Pictures, Inc., et al.

498 US 851, 112 L Ed 2d 109, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, denied.

Same case below, 394 Pa Super 619, 565 A2d 824.

No. 90-129. Henry T. Kane, Petitioner v Secretary of the Commonwealth of Pennsylvania

498 US 851, 112 L Ed 2d 109, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Middle District, denied.

Same case below, 525 Pa 134, 578 A2d 407.

No. 90-130. American Manufacturers Mutual Insurance Company, et al., Petitioners v United States

498 US 851, 112 L Ed 2d 109, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 901 F2d 370.

No. 90-132. Vladimir Zacharkiewicz, Petitioner v California

498 US 851, 112 L Ed 2d 110, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-133. Bernard A. Schwartz, et al., Petitioners v Robert E. Harrison, et al.

498 US 851, 112 L Ed 2d 110, 111 S Ct 143.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 319 Md 360, 572 A2d 528.

No. 90-135. Anna Pleasant, Personal Representative of the Estate of Jeffrey Pleasant, Deceased, Petitioner v Michael Zamieski

498 US 851, 112 L Ed 2d 110, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 272.

No. 90-136. Richard Fraige, et al., Petitioners v American National Watermattress Corporation

498 US 851, 112 L Ed 2d 110, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 902 F2d 43.

No. 90-137. Trans Pacific Bancorp., et al., Petitioners v Richard F. Schey

498 US 851, 112 L Ed 2d 110, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-138. Richard G. Bennett, Petitioner v Arkansas

498 US 851, 112 L Ed 2d 110, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 302 Ark 179, 789 SW2d 436.

No. 90-141. Bobby H. Harden, Petitioner v Beril Hoosier

498 US 852, 112 L Ed 2d 111, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 154.

No. 90-146. William Marion Walker, Petitioner v Board of County Commissioners of Muskogee County, Oklahoma, et al.

498 US 852, 112 L Ed 2d 111, 111 S Ct 144.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Oklahoma denied.

Same case below, 788 P2d 957.

No. 90-148. Maurice L. Klein, Petitioner v Iowa Department of Revenue and Finance

498 US 852, 112 L Ed 2d 111, 111 S Ct 145.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Iowa denied.

Same case below, 451 NW2d 837.

No. 90-150. Nelson P. Fordham, Petitioner v Office of Personnel Management

498 US 852, 112 L Ed 2d 111, 111 S Ct 145, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 889 F2d 1100.

No. 90-154. Elijah Davis, Petitioner v United States Postal Service

498 US 852, 112 L Ed 2d 111, 111 S Ct 145.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 551.

No. 90-156. Robert B. Machen, Petitioner v United States

498 US 852, 112 L Ed 2d 111, 111 S Ct 145, reh den 498 US 994, 112 L Ed 2d 553, 111 S Ct 545.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same Case below, 902 F2d 1567.

No. 90-157. Trustees of the Centennial State Carpenters Pension Trust Fund, Petitioners v Centric Corporation

498 US 852, 112 L Ed 2d 112, 111 S Ct 145.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 901 F2d 1514.

No. 90-158. Patricia M. Bourke, Petitioner v Jeanne Schuman, William Gibbs, and David Himmelman

498 US 852, 112 L Ed 2d 112, 111 S Ct 145.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1416.

No. 90-159. Town of Babylon, New York, et al., Petitioners v National Advertising Company, et al.

498 US 852, 112 L Ed 2d 112, 111 S Ct 146.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 900 F2d 551.

No. 90-160. Charles Michael Smith, Petitioner v Kentucky

498 US 852, 112 L Ed 2d 112, 111 S Ct 146.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

Same case below, 788 SW2d 266.

No. 90-161. MPM Contractors, Inc., Petitioner v Department of Health and Environment of Kansas

498 US 852, 112 L Ed 2d 112, 111 S Ct 146.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Kansas denied.

Same case below, 14 Kan App 2d xxxi, 788 P2d 1344.

No. 90-163. Gary O. Everett, Petitioner v I-NET, Inc., Kaval R. Bajaj, and Ken Bajaj

498 US 852, 112 L Ed 2d 112, 111 S Ct 146.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 251.

No. 90-164. Gerald Strubinger, Petitioner v United States Postal Service

498 US 852, 112 L Ed 2d 112, 111 S Ct 146.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 899 F2d 1228.

No. 90-165. Robert Lane Wise, Petitioner v North Carolina

498 US 853, 112 L Ed 2d 113, 111 S Ct 146.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of North Carolina denied.

Same case below, 326 NC 421, 390 SE2d 142.

No. 90-167. Joel Edward Freedland, Petitioner v Michigan

498 US 853, 112 L Ed 2d 113, 111 S Ct 147.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

Same case below, 178 Mich App 761, 444 NW2d 250.

No. 90-170. Joseph V. Magnone, et al., Petitioners v United States

498 US 853, 112 L Ed 2d 113, 111 S Ct 147.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 192.

No. 90-173. Gary D. Swank, Petitioner v James Smart, Individually and as City Marshal of Carthage, Illinois, et al.

498 US 853, 112 L Ed 2d 113, 111 S Ct 147.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 898 F2d 1247.

No. 90-174. Anne Duffy Pokorny, Administratrix of the Estate of John Duffy, Deceased, Petitioner v Ford Motor Company

498 US 853, 112 L Ed 2d 113, 111 S Ct 147.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1116.

No. 90-175. Sylvia J. Dennis, Petitioner v City of Middleton, Wisconsin, et al. (two cases)

498 US 853, 112 L Ed 2d 114, 111 S Ct 147.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 37 (second case).

No. 90-177. Betty P. Douthwaite, Petitioner v Virginia

498 US 853, 112 L Ed 2d 114, 111 S Ct 147, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1564.

No. 90-178. George J. Aubin, et al., Petitioners v E. F. Hutton Group, Inc., et al.

498 US 853, 112 L Ed 2d 114, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-179. Independence Federal Savings Bank, Petitioner v James B. Huntley

498 US 853, 112 L Ed 2d 114, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 573 A2d 787.

No. 90-180. Irwin Cooper, Petitioner v United States, et al.

498 US 853, 112 L Ed 2d 114, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 543.

No. 90-183. Robert A. Gooden, Petitioner v Town of Clarkton, North Carolina, et al.

498 US 853, 112 L Ed 2d 114, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 145.

No. 90-185. District 2 Marine Engineers Beneficial Association, et al., Petitioners v Delta Queen Steamboat Company

498 US 853, 112 L Ed 2d 114, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 889 F2d 599.

No. 90-186. Randall Hage Jamail, Petitioner v Texas

498 US 853, 112 L Ed 2d 115, 111 S Ct 148.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same Case below, 787 SW2d 380.

No. 90-187. David J. Ewen, Petitioner v Illinois

498 US 854, 112 L Ed 2d 115, 111 S Ct 149.

October 1, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Second District, denied.

Same case below, 194 Ill App 3d 404, 141 Ill Dec 433, 551 NE2d 426.

No. 90-188. International Consulting Services, Inc., Petitioner v Richard K. Gilbert

498 US 854, 112 L Ed 2d 115, 111 S Ct 149, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-192. Universal Health Services of Nevada, Inc., Petitioner v Aerospatiale Helicopter Corporation

498 US 854, 112 L Ed 2d 115, 111 S Ct 149.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fifth District, denied.

Same Case below, 778 SW2d 492.

No. 90-195. Luis A. Soro, aka Citicorp Mortgage Company, Inc., Petitioner v Citicorp, et al.

498 US 854, 112 L Ed 2d 115, 111 S Ct 149.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 158.

No. 90-197. Mahinder S. Uberoi, Petitioner v Murray Richtel

498 US 854, 112 L Ed 2d 115, 111 S Ct 149.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-199. Teledyne, Inc., Petitioner v Marjorie Datskow, et al.

498 US 854, 112 L Ed 2d 116, 111 S Ct 149.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 1298.

No. 90-204. Marc A. Dumford, Petitioner v United States

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 137.

No. 90-207. Bruce Ball, et al., Petitioners v Metallurgie Hoboken-Overpelt, S.A.

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 194.

No. 90-208. Hennepin Technical Center, et al., Petitioners v Linda J. Hawkins

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 900 F2d 153.

No. 90-210. Jim Bouton Corporation, Petitioner v Wm. Wrigley Jr. Company, et al.

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1074.

No. 90-211. Eric C. Stallings, Petitioner v United States

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1532.

No. 90-212. James Hayton, Petitioner v Henry Grayson

498 US 854, 112 L Ed 2d 116, 111 S Ct 150.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

No. 90-214. Charles A. Fahrig, et ux., Petitioners v Richard S. Dodge, Judge

498 US 854, 112 L Ed 2d 117, 111 S Ct 151.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same class below, 46 Ohio St 3d 715, 546 NE2d 1333.

No. 90-215. Grady Michael Stroman, Petitioner v West Coast Grocery Company

498 US 854, 112 L Ed 2d 117, 111 S Ct 151.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 884 F2d 458.

No. 90-216. Walter J. Moeller, Petitioner v United States

498 US 855, 112 L Ed 2d 117, 111 S Ct 151, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 509.

No. 90-219. Riverview Investments, Inc., et al., Petitioners v Ottawa Community Improvement Corporation, et al.

498 US 855, 112 L Ed 2d 117, 111 S Ct 151.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 474.

No. 90-222. Beverly Ann Cook, et al., Petitioners v Araminta McCullough, et al.

498 US 855, 112 L Ed 2d 117, 111 S Ct 151.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Tennessee, Middle Division, denied.

No. 90-226. Carol A. Davis, Petitioner v City of Spokane

498 US 855, 112 L Ed 2d 117, 111 S Ct 151.

October 1, 1990. Petition for writ of certiorari to the Superior Court of Washington, County of Spokane, denied.

No. 90-227. Harbhajan Singh Atwal, Petitioner v City of Riverside

498 US 855, 112 L Ed 2d 118, 111 S Ct 152, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-229. Rees Lloyd, Petitioner v Richard T. Long

498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 216 Cal App 3d 1287, 265 Cal Rptr 96.

No. 90-230. Maxine Ehrhardt, Petitioner v Penn Mutual Life Insurance Company, et al.

498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 664.

No. 90-231. Florida, Petitioner v Duane Eugene Owen

498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 560 So 2d 207.

No. 90-233. Donald Eugene Ryans, Petitioner v United States

498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 903 F2d 731.

No. 90-234. City of Seaford, Delaware, Petitioner v Delmarva Power & Light Company

498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Delaware denied.

Same case below, 575 A2d 1089.

No. 90-235. Waste Contractors, Inc., Petitioner v Lauderdale County Commission, et al.

498 US 855, 112 L Ed 2d 118, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 565 So 2d 623.

No. 90-238. City of Dallas, Petitioner v Howard Rosenstein

498 US 855, 112 L Ed 2d 119, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 61.

No. 90-241. George G. Rhodes, Petitioner v Nebraska State Bar Association

498 US 855, 112 L Ed 2d 119, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Nebraska denied.

Same case below, 234 Neb 799, 453 NW2d 73.

No. 90-242. James Ray Dabney, et al., Petitioners v South Carolina

498 US 855, 112 L Ed 2d 119, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 301 SC 271, 391 SE2d 563.

No. 90-243. William R. Burt, et ux., Petitioners v Maui Architectural Group, Inc., et al.

498 US 856, 112 L Ed 2d 119, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Hawaii denied.

Same case below, 71 Hawaii 650, 833 P2d 895.

No. 90-250. Ocelia Perkins, Petitioner v United States

498 US 856, 112 L Ed 2d 119, 111 S Ct 153.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 90-251. Roberto Figueroa, Petitioner v United States

498 US 856, 112 L Ed 2d 119, 111 S Ct 154.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 144.

No. 90-252. Ferdinand Drexel Investment Co., Inc., et al., Petitioners v Victor F. Alibert, et al.

498 US 856, 112 L Ed 2d 120, 111 S Ct 154.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 694.

No. 90-260. Richard J. Wagner, Petitioner v Pennsylvania Real Estate Commission

498 US 856, 112 L Ed 2d 120, 111 S Ct 154.

October 1, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

Same case below, 126 Pa Cmwlth 368, 559 A2d 999.

No. 90-261. Lloyd Olson, Petitioner v Douglas J. Marston, et al.

498 US 856, 112 L Ed 2d 120, 111 S Ct 154.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-264. Stanley Sterner, Petitioner v Commissioner of Internal Revenue

498 US 856, 112 L Ed 2d 120, 111 S Ct 154.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 30.

No. 90-265. Peter G. Stack, Petitioner v United States

498 US 856, 112 L Ed 2d 120, 111 S Ct 154, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 894 F2d 1338.

No. 90-267. W. Otis Culpepper, Petitioner v United States

498 US 856, 112 L Ed 2d 120, 111 S Ct 155.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 65.

No. 90-283. Charles Frederick Schwark, Jr., Petitioner v United States

498 US 856, 112 L Ed 2d 120, 111 S Ct 155.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 714.

No. 90-306. Ivan Stroh, Petitioner v United States

498 US 856, 112 L Ed 2d 121, 111 S Ct 155.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 509.

No. 90-312. Duvalier Antonio Davis, Petitioner v United States

498 US 856, 112 L Ed 2d 121, 111 S Ct 155.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 900 F2d 1524.

No. 90-5001. David Thomas Schieman, Petitioner v United States

498 US 856, 112 L Ed 2d 121, 111 S Ct 155.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 894 F2d 909.

No. 90-5002. James W. Moore, Petitioner v Trump Casino-Hotel

498 US 856, 112 L Ed 2d 121, 111 S Ct 155, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 897 F2d 522.

No. 90-5004. Norman Keith Chase, Petitioner v Edwin J. Peterson, et al.

498 US 856, 112 L Ed 2d 121, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5005. Jacqueline Robinson, Petitioner v United States

498 US 857, 112 L Ed 2d 121, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 902 F2d 959.

No. 90-5006. Dennis John Dechaine, Petitioner v Maine

498 US 857, 112 L Ed 2d 122, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied.

Same case below, 572 A2d 130.

No. 90-5007. Moshe Fox, Petitioner v United States

498 US 857, 112 L Ed 2d 122, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 1047.

No. 90-5008. Martin Wexler, Petitioner v Citicorp Mortgage, Inc., et al.

498 US 857, 112 L Ed 2d 122, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5009. Donnie Ray Hodges, Petitioner v United States

498 US 857, 112 L Ed 2d 122, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 15.

No. 90-5010. Daniel S. Molnar, Petitioner v Unemployment Compensation Board of Review

498 US 857, 112 L Ed 2d 122, 111 S Ct 156.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied.

Same case below, 525 Pa 590, 575 A2d 119.

No. 90-5012. Michelle R. Mallory, Petitioner v United States

498 US 857, 112 L Ed 2d 122, 111 S Ct 157.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 37.

No. 90-5013. Paul Kirk, Petitioner v Patrick W. Keohane, Warden

498 US 857, 112 L Ed 2d 122, 111 S Ct 157.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1218.

No. 90-5014. Frank Haacke, Petitioner v Walter Leapley, Warden, et al.

498 US 857, 112 L Ed 2d 123, 111 S Ct 157.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5017. James R. Burton, Petitioner v United States

498 US 857, 112 L Ed 2d 123, 111 S Ct 157.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 188.

No. 90-5018. Marion Strickland, Petitioner v Mississippi

498 US 857, 112 L Ed 2d 123, 111 S Ct 157.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Mississippi denied.

Same case below, 557 So 2d 771.

No. 90-5019. Teresa F. Mitan, Petitioner v Frank J. Mitan

498 US 857, 112 L Ed 2d 123, 111 S Ct 158.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 1336.

No. 90-5020. Soroosh Homayouni, Petitioner v United States

498 US 857, 112 L Ed 2d 123, 111 S Ct 158.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 33.

No. 90-5021. Francisco H. Guzman, Petitioner v Harry H. Flickinger

498 US 857, 112 L Ed 2d 123, 111 S Ct 158, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-5022. Thomas Shields, Petitioner v United States

498 US 857, 112 L Ed 2d 123, 111 S Ct 158.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 257.

No. 90-5023. Ricardo Rodriguez, Petitioner v United States

498 US 857, 112 L Ed 2d 124, 111 S Ct 158.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 1324.

No. 90-5024. Ricardo Seeney, Petitioner v United States

498 US 858, 112 L Ed 2d 124, 111 S Ct 158.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 563 A2d 1081.

No. 90-5025. Robert Scroggins, Petitioner v United States

498 US 858, 112 L Ed 2d 124, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5026. Francisco Rosas, Petitioner v United States

498 US 858, 112 L Ed 2d 124, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 828.

No. 90-5028. Carroll Stoianoff, Petitioner v New American Library, et al.

498 US 858, 112 L Ed 2d 124, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 766, 551 NYS2d 907, 551 NE2d 108.

No. 90-5030. Freddie Taylor, Petitioner v Cumberland County District Attorney's Office, et al.

498 US 858, 112 L Ed 2d 124, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1566.

No. 90-5031. Curtis Enrique T., Petitioner v California

498 US 858, 112 L Ed 2d 125, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 214 Cal App 3d 1391, 263 Cal Rptr 296.

No. 90-5033. Antonio Hernandez, Petitioner v United States

498 US 858, 112 L Ed 2d 125, 111 S Ct 159.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 896 F2d 513.

No. 90-5034. Michael Curtis Keys, Petitioner v United States

498 US 858, 112 L Ed 2d 125, 111 S Ct 160.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 899 F2d 983.

No. 90-5035. Jack Joe Holland, Petitioner v Dewey Sowders, et al.

498 US 858, 112 L Ed 2d 125, 111 S Ct 160.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 898 F2d 154.

No. 90-5036. John James Jaakkola, Petitioner v Stephanie J. Snyder, et al.

498 US 858, 112 L Ed 2d 125, 111 S Ct 160.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 889 F2d 1087.

No. 90-5037. Barney L. Byrum, Elizabeth Byrum as Guardian of Spencer Nathaniel Byrum, Individually, Petitioners v Michael Grimes and Thomas Burton

498 US 858, 112 L Ed 2d 125, 111 S Ct 160, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

Octoer 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 90-5038. Katie Whitney, Petitioner v United States, et al.

498 US 858, 112 L Ed 2d 126, 111 S Ct 160.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5039. Charles Stinyard, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 858, 112 L Ed 2d 126, 111 S Ct 160.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1114.

No. 90-5040. Gonzalo Jesus Valencia, Petitioner v United States

498 US 858, 112 L Ed 2d 126, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1114.

No. 90-5041. Leonardo Rubio, Petitioner v United States

498 US 858, 112 L Ed 2d 126, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1111.

No. 90-5042. John Gray, Petitioner v City of Houston, et al.

498 US 859, 112 L Ed 2d 126, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-5043. Patrick James Campbell, Petitioner v Flathead County Sheriff, et al.

498 US 859, 112 L Ed 2d 126, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 894 F2d 1344.

No. 90-5046. Mary Theresa Dorailea Duran, Petitioner v United States

498 US 859, 112 L Ed 2d 126, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Tenth Circuit denied.

No. 90-5048. James Ray Erwin, Petitioner v United States

498 US 859, 112 L Ed 2d 127, 111 S Ct 161.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 510.

No. 90-5049. Manuel Arrellano Franco, Petitioner v Arizona, et al.

498 US 859, 112 L Ed 2d 127, 111 S Ct 162.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division Two, denied.

No. 90-5052. Susan G. Madden, Petitioner v James S. Thorburn, et al.

498 US 859, 112 L Ed 2d 127, 111 S Ct 162, reh den 498 US 994, 112 L Ed 2d 555, 111 S Ct 546.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 889 F2d 1087.

No. 90-5053. Bruce Milton Mack, Petitioner v United States

498 US 859, 112 L Ed 2d 127, 111 S Ct 162.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 892 F2d 134.

No. 90-5054. Christos Netelkos, Petitioner v United States

498 US 859, 112 L Ed 2d 127, 111 S Ct 162.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1563.

No. 90-5055. George E. Myers, Petitioner v William L. Callahan, Superintendent, McNeil Island Corrections Center

498 US 859, 112 L Ed 2d 127, 111 S Ct 162.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 40.

No. 90-5056. Charlotte R. Hurd, Petitioner v Robert S. Hurd, et al.

498 US 859, 112 L Ed 2d 128, 111 S Ct 162.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 881 F2d 1084.

No. 90-5057. Muhammad 'Isa Muniyr, aka Alfred Augustus Green, Petitioner v Parker Evatt, Commissioner, South Carolina Department of Corrections, et al.

498 US 859, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 253.

No. 90-5058. Alvin Lee Harrison, Petitioner v D. A. Watts

498 US 859, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 13.

No. 90-5059. Howard Eugene Hughes, Petitioner v United States

498 US 859, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 901 F2d 830.

No. 90-5062. Thomas Shanley, Petitioner v United States

498 US 859, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5063. Valdemar Prince, Petitioner v Evadney Rogers

498 US 859, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 696.

No. 90-5064. Francisca Rosa Velasquez, Petitioner v United States

498 US 860, 112 L Ed 2d 128, 111 S Ct 163.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5067. Charlie William Turner, Petitioner v United States

498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 149.

No. 90-5068. Clara Winston, Petitioner v Mitchell Kossoff

498 US 860, 112 L Ed 2d 129, 111 S Ct 164, reh den 498 US 994, 112 L Ed 2d 555, 111 S Ct 547.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 33.

No. 90-5069. Danny Thiemecke, Petitioner v United States

498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 1368.

No. 90-5070. Daries Sherrills, Petitioner v Norris McMackin, Warden

498 US 860, 112 L Ed 2d 129, 111 S Ct 164, reh den 498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-5072. David Keith Belgard, Sr., Petitioner v United States

498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 894 F2d 1092.

No. 90-5074. Carl Houston Boggess, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 704.

No. 90-5075. Richard J. Bedony, Petitioner v Illinois

498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

No. 90-5076. Jay Street, Petitioner v Dale Foltz, Warden

498 US 860, 112 L Ed 2d 130, 111 S Ct 165, reh den 498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-5077. Nancy Proffit and Caroline Arwood, Petitioners v Bruce U. Kozlowski, et al.

498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 254.

No. 90-5080. Louis Bello, Petitioner v Virginia Employment Commission

498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Virginia denied.

No. 90-5081. Clarence S. Davis, Petitioner v Greg Pharies, et al.

498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5082. Ronnie Green, Petitioner v New York

498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 902, 554 NYS2d 821, 553 NE2d 1331.

No. 90-5083. Robert Scott, Petitioner v United States

498 US 860, 112 L Ed 2d 130, 111 S Ct 166.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 713.

No. 90-5084. William Lebron Church, Petitioner v C. E. Thompson, et al.

498 US 860, 112 L Ed 2d 131, 111 S Ct 166, reh den 498 US 963, 112 L Ed 2d 408, 111 S Ct 399.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1137.

No. 90-5085. Jessie James Griffin, Petitioner v Thomas A. Fulcomer, Superintendent, State Correctional Institution, Huntingdon, Pennsylvania, et al.

498 US 861, 112 L Ed 2d 131, 111 S Ct 166.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1559.

No. 90-5087. Pamela Saunders, Petitioner v Vermont Department of Social and Rehabilitation Services

498 US 861, 112 L Ed 2d 131, 111 S Ct 166.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Vermont denied.

Same case below, 153 Vt 504, 572 A2d 884.

No. 90-5089. Arthur Jenkins, Petitioner v Oklahoma

498 US 861, 112 L Ed 2d 131, 111 S Ct 166.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 90-5090. Franklin Miller, Petitioner v James Rowland, Director, California Department of Corrections, et al.

498 US 861, 112 L Ed 2d 131, 111 S Ct 166.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1417.

No. 90-5091. Ray Franklin Moore, Petitioner v Richard M. Anderson, et al.

498 US 861, 112 L Ed 2d 131, 111 S Ct 167.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5092. Edward Michael McConnell, Petitioner v T. C. Martin, Warden, et al.

498 US 861, 112 L Ed 2d 131, 111 S Ct 167.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 896 F2d 441.

No. 90-5094. Diego Gonzalez Ocanas, Petitioner v United States

498 US 861, 112 L Ed 2d 132, 111 S Ct 167.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 263.

No. 90-5095. Morris May, Petitioner v Federal Communications Commission

498 US 861, 112 L Ed 2d 132, 111 S Ct 167, reh den 498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 407.

No. 90-5096. Charles E. McCorvey, Petitioner v United States

498 US 861, 112 L Ed 2d 132, 111 S Ct 167.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-5097. Lucious Hall, Petitioner v B. Thomas Conger, et al.

498 US 861, 112 L Ed 2d 132, 111 S Ct 167.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5098. Leonida Lidman, Petitioner v Newark Redevelopment and Housing Authority, et al.

498 US 861, 112 L Ed 2d 132, 111 S Ct 168, reh den 498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-5102. George Wood, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 861, 112 L Ed 2d 132, 111 S Ct 168.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5105. Nathaniel Scott, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections, et al.

498 US 861, 112 L Ed 2d 133, 111 S Ct 168.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 255.

No. 90-5106. Mercedes Borrero, Petitioner v United States

498 US 862, 112 L Ed 2d 133, 111 S Ct 168.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-5107. Werner Bruchhausen, Petitioner v United States

498 US 862, 112 L Ed 2d 133, 111 S Ct 168.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 897 F2d 536.

No. 90-5110. Lonnie C. Baggett, Jr., Petitioner v United States

498 US 862, 112 L Ed 2d 133, 111 S Ct 168.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1546.

No. 90-5111. Jeffrey Camacho, Petitioner v United States

498 US 862, 112 L Ed 2d 133, 111 S Ct 169.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 900 F2d 571.

No. 90-5113. John L. Neal, Jr., Petitioner v United States

498 US 862, 112 L Ed 2d 133, 111 S Ct 169.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5114. Charles Rice, Petitioner v Chandra Doyle, et al.

498 US 862, 112 L Ed 2d 133, 111 S Ct 169.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 1569.

No. 90-5117. Julio Natal, Petitioner v New York

498 US 862, 112 L Ed 2d 134, 111 S Ct 169.

October 1, 1990. Petitioner for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 379, 553 NYS2d 650, 553 NE2d 239.

No. 90-5118. Lester V. Keran, Jr., Petitioner v Terry L. Morris, Warden

498 US 862, 112 L Ed 2d 134, 111 S Ct 169.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 259.

No. 90-5119. Michael B. McGann, Petitioner v Michael Cunningham, Warden, et al.

498 US 862, 112 L Ed 2d 134, 111 S Ct 169.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

No. 90-5120. Henderson McLee, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections, et al.

498 US 862, 112 L Ed 2d 134, 111 S Ct 170.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 700.

No. 90-5121. David Darrell Moore, Petitioner v Steve W. Puckett, Superintendent, Mississippi State Penitentiary

498 US 862, 112 L Ed 2d 134, 111 S Ct 170.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5122. John A. Margetis, Petitioner v United States

498 US 862, 112 L Ed 2d 134, 111 S Ct 170.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 90-5124. Wayne Alton, Petitioner v United States

498 US 862, 112 L Ed 2d 135, 111 S Ct 170.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 696.

No. 90-5125. Martin Neil Brawley, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 862, 112 L Ed 2d 135, 111 S Ct 170, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5126. Jaime Traverso, Petitioner v Thomas Israel, et al.

498 US 862, 112 L Ed 2d 135, 111 S Ct 170.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 30.

No. 90-5127. Winslow Watson, Petitioner v Mike Gardner, et al.

498 US 863, 112 L Ed 2d 135, 111 S Ct 171.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1223.

No. 90-5128. Thomas Woods, Petitioner v United States

498 US 863, 112 L Ed 2d 135, 111 S Ct 171.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5129. Karen Sue Frederick, Petitioner v United States

498 US 863, 112 L Ed 2d 135, 111 S Ct 171.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 897 F2d 490.

No. 90-5130. Evelyn Silver, Petitioner v Vermont, et al.

498 US 863, 112 L Ed 2d 135, 111 S Ct 171.

October 1, 1990. Petition for writ

of certiorari to the Supreme Court of Vermont denied.

No. 90-5131. Ben W. Allustiarte and Linda M. Allustiarte, Petitioners v W. Austin Cooper

498 US 863, 112 L Ed 2d 136, 111 S Ct 171, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 1045.

No. 90-5133. Donna Carvalho, Petitioner v New York State Department of Environmental Conservation, et al.

498 US 863, 112 L Ed 2d 136, 111 S Ct 171.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-5135. Milton Smith, Petitioner v United States

498 US 863, 112 L Ed 2d 136, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 64, 901 F2d 1116.

No. 90-5136. Arthur Venie, Petitioner v United States

498 US 863, 112 L Ed 2d 136, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1563.

No. 90-5137. Aundre Ross, Petitioner v United States

498 US 863, 112 L Ed 2d 136, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 1050.

No. 90-5138. Ricky Lee Owens, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 863, 112 L Ed 2d 136, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1531.

No. 90-5139. Alonzo Wooten, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 863, 112 L Ed 2d 137, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1533.

No. 90-5144. Felix Patterson, Petitioner v United States

498 US 863, 112 L Ed 2d 137, 111 S Ct 172.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 575 A2d 305.

No. 90-5145. Eugene H. Hewlett, Petitioner v Jeffrey A. Beard, et al.

498 US 863, 112 L Ed 2d 137, 111 S Ct 173, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 721.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5146. Sherifat Usman, Petitioner v United States

498 US 863, 112 L Ed 2d 137, 111 S Ct 173.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 1476.

No. 90-5147. Salvatore Panico, Petitioner v United States

498 US 863, 112 L Ed 2d 137, 111 S Ct 173.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 35.

No. 90-5149. Frank Citro, Petitioner v United States

498 US 864, 112 L Ed 2d 137, 111 S Ct 173.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 879 F2d 514.

No. 90-5150. Francisco Sanchez-Ortiz, Petitioner v United States

498 US 864, 112 L Ed 2d 137, 111 S Ct 173.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 263.

No. 90-5151. John Schmitz, Petitioner v Lawrence Gibbs

498 US 864, 112 L Ed 2d 138, 111 S Ct 173, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

October 1, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

No. 90-5154. Robert Balascsak, Petitioner v United States

498 US 864, 112 L Ed 2d 138, 111 S Ct 173.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1562.

No. 90-5155. Rhonald Beverly, et ux., Petitioners v United States

498 US 864, 112 L Ed 2d 138, 111 S Ct 174, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548, and reh den (US) 121 L Ed 2d 576, 113 S Ct 648.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 32.

No. 90-5157. Paul Raines, Petitioner v Richard Singleton, Warden, et al.

498 US 864, 112 L Ed 2d 138, 111 S Ct 174.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 254.

No. 90-5158. Garnet Weller, Petitioner v Mason Waters, Warden, et al.

498 US 864, 112 L Ed 2d 138, 111 S Ct 174.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1141.

No. 90-5159. Leroy Wafer, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 864, 112 L Ed 2d 138, 111 S Ct 174, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 549.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5160. Ali T. Agha, Petitioner v Department of the Army, et al.

498 US 864, 112 L Ed 2d 139, 111 S Ct 174, reh den (US) 115 L Ed 2d 1085, 111 S Ct 2922.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5165. James Burke Hall, Petitioner v James A. Jordan, et al.

498 US 864, 112 L Ed 2d 139, 111 S Ct 174.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1115.

No. 90-5166. Bufford McDonald, Petitioner v Elisha Demerson

498 US 864, 112 L Ed 2d 139, 111 S Ct 175.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 958.

No. 90-5167. Ivan Santiago Lotero-Nunez, Petitioner v United States

498 US 864, 112 L Ed 2d 139, 111 S Ct 175.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 713.

No. 90-5168. Chris Lamarr Hostetler, Petitioner v United States

498 US 864, 112 L Ed 2d 139, 111 S Ct 175.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5169. Edward A. Ganey, Jr., Petitioner v David Chester

498 US 864, 112 L Ed 2d 139, 111 S Ct 175, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 28.

No. 90-5170. Ross Aaron, Petitioner v Charlie Jones, Warden, et al.

498 US 864, 112 L Ed 2d 139, 111 S Ct 175.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied.

No. 90-5172. Jasper Buchanan, Petitioner v T. Travis Medlock, et al.

498 US 864, 112 L Ed 2d 140, 111 S Ct 176, reh den 498 US 1018, 112 L Ed 2d 598, 111 S Ct 594.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

No. 90-5174. William H. Marshall, Jr., Petitioner v Ohio

498 US 865, 112 L Ed 2d 140, 111 S Ct 176.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Columbiana County, denied.

No. 90-5175. Antonio Cuevas Hernandez, Petitioner v United States

498 US 865, 112 L Ed 2d 140, 111 S Ct 176.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-5179. Tito Caicedo Ibarguen, Petitioner v United States

498 US 865, 112 L Ed 2d 140, 111 S Ct 176.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 889 F2d 272.

No. 90-5180. Albert William Lacy, Petitioner v United States

498 US 865, 112 L Ed 2d 140, 111 S Ct 176.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 256.

No. 90-5182. Robert W. Clark, Petitioner v United States

498 US 865, 112 L Ed 2d 140, 111 S Ct 176.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5184. Robert Kent Smith, Petitioner v Alex Tandy, et al.

498 US 865, 112 L Ed 2d 140, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 897 F2d 355.

No. 90-5185. Alfredo Perez, Petitioner v United States

498 US 865, 112 L Ed 2d 141, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 751.

No. 90-5186. Michael Smith, Petitioner v Richard J. Cadagin, Judge, Seventh Judicial Circuit, Morgan County, Illinois, et al.

498 US 865, 112 L Ed 2d 141, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 553.

No. 90-5187. David Bruce Gilbert, Petitioner v M. David Ben-Asher, et al.

498 US 865, 112 L Ed 2d 141, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 1407.

No. 90-5188. Donald Gene Henthorn and Tom David Riley, Petitioners v United States

498 US 865, 112 L Ed 2d 141, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5189. Doudou Janneh, Petitioner v GAF Corporation and Ozalid Corporation

498 US 865, 112 L Ed 2d 141, 111 S Ct 177.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 887 F2d 432.

No. 90-5190. John Robert Myers, Petitioner v Joseph Martinez, Warden

498 US 865, 112 L Ed 2d 141, 111 S Ct 178, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 721.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 880 F2d 1323.

No. 90-5191. William J. Mayers, Petitioner v United States

No. 90-5506. Patricia Mayers, Petitioner v United States

498 US 865, 112 L Ed 2d 142, 111 S Ct 178.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 897 F2d 1126.

No. 90-5192. Lawrence D. Johnson, Petitioner v Luella Burke

498 US 865, 112 L Ed 2d 142, 111 S Ct 178.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 903 F2d 1056.

No. 90-5194. Philocles Joffre, Petitioner v United States

498 US 865, 112 L Ed 2d 142, 111 S Ct 178.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 894 F2d 403.

No. 90-5196. John Calvin Cofield, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 866, 112 L Ed 2d 142, 111 S Ct 178.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 699.

No. 90-5197. Donald Britton, Petitioner v Laymon Godwin, et al.

498 US 866, 112 L Ed 2d 142, 111 S Ct 179.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 903 F2d 824.

No. 90-5200. Irene Petrarca, Petitioner v Romeo S. Picerne, Jr., et al.

498 US 866, 112 L Ed 2d 142, 111 S Ct 179, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Rhode Island denied.

No. 90-5201. Jorge Audinot, Petitioner v United States

498 US 866, 112 L Ed 2d 142, 111 S Ct 179.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 901 F2d 1201.

No. 90-5202. Nolan Dixon, Petitioner v United States

498 US 866, 112 L Ed 2d 143, 111 S Ct 179.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 511.

No. 90-5203. Bobby Phillips, Petitioner v Shawano County, Wisconsin, et al.

498 US 866, 112 L Ed 2d 143, 111 S Ct 179.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5205. William Richardson, Petitioner v Richard L. Stalder, Warden

498 US 866, 112 L Ed 2d 143, 111 S Ct 179.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5208. Jose Pagan Campino, Petitioner v United States

498 US 866, 112 L Ed 2d 143, 111 S Ct 179.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 890 F2d 588.

No. 90-5214. Qusan Qadhafi, Petitioner v Virginia

498 US 866, 112 L Ed 2d 143, 111 S Ct 180, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Virginia denied.

No. 90-5216. Edward L. Giovanni, Jr., Petitioner v John Whitley, Warden

498 US 866, 112 L Ed 2d 143, 111 S Ct 180.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5219. Gregg A. Morris, Petitioner v United States

498 US 866, 112 L Ed 2d 143, 111 S Ct 180.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 183, 902 F2d 1009.

No. 90-5221. Gordon A. Rashe, Petitioner v George Bush, President of the United States, et al.

498 US 866, 112 L Ed 2d 144, 111 S Ct 180.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5223. Esequiel Rodriguez, Petitioner v Oscar Lopez, et al.

498 US 866, 112 L Ed 2d 144, 111 S Ct 180.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 1014.

No. 90-5224. James Willie Smith, Petitioner v Talmadge Barnett, Attorney General of North Carolina

498 US 866, 112 L Ed 2d 144, 111 S Ct 180.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1531.

No. 90-5225. Rolando Ferrer-Mazorra, Petitioner v United States

498 US 866, 112 L Ed 2d 144, 111 S Ct 181.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5226. Gary Lee Thomas, Petitioner v Nebraska

498 US 867, 112 L Ed 2d 144, 111 S Ct 181.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Nebraska denied.

Same case below, 235 Neb 129, 453 NW2d 752.

No. 90-5227. Carlton Rolle, Petitioner v Florida

498 US 867, 112 L Ed 2d 144, 111 S Ct 181.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 560 So 2d 1154.

No. 90-5228. Dan Gregory Duncan, Petitioner v United States

498 US 867, 112 L Ed 2d 144, 111 S Ct 181.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5229. Ronald Schroeder, Petitioner v United States

498 US 867, 112 L Ed 2d 145, 111 S Ct 181.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 902 F2d 1469.

No. 90-5230. Delena Christy, Petitioner v Mayrener Alexander, et al.

498 US 867, 112 L Ed 2d 145, 111 S Ct 181.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, First Circuit, denied.

Same case below, 551 So 2d 73.

No. 90-5231. Joe Stephens, Petitioner v Cliff Head, et al.

498 US 867, 112 L Ed 2d 145, 111 S Ct 182.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1333.

No. 90-5232. Luis Santiago, Petitioner v United States

498 US 867, 112 L Ed 2d 145, 111 S Ct 182.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-5233. Ronald Benedict, Petitioner v Robert J. Henderson, Warden, et al.

498 US 867, 112 L Ed 2d 145, 111 S Ct 182.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 34.

No. 90-5235. David Lynn Meador, on Behalf of his Daughters, Amanda, Serah, and Tabetha Meador, Petitioner v Cabinet for Human Resources of Kentucky, et al.

498 US 867, 112 L Ed 2d 145, 111 S Ct 182.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 474.

No. 90-5237. Frederick M. Anderson, Petitioner v United States

498 US 867, 112 L Ed 2d 146, 111 S Ct 182.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1105.

No. 90-5238. Stephen Warren Setliff, Petitioner v United States

498 US 867, 112 L Ed 2d 146, 111 S Ct 183.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 30.

No. 90-5239. Anthony Toliver, Petitioner v Clarence Jackson, et al.

498 US 867, 112 L Ed 2d 146, 111 S Ct 183.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 701.

No. 90-5240. Terry Michael Turner, Petitioner v Harold Falk, Director, Hawaii Department of Corrections, et al.

498 US 867, 112 L Ed 2d 146, 111 S Ct 183, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5241. Andrew D. Kirk, Petitioner v United States

498 US 867, 112 L Ed 2d 146, 111 S Ct 183.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 893 F2d 1325.

No. 90-5242. George Paul Laroque, Petitioner v Qantas Airways, Ltd.

498 US 867, 112 L Ed 2d 146, 111 S Ct 183.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 263.

No. 90-5243. Max Garry Jones, Petitioner v United States

498 US 868, 112 L Ed 2d 147, 111 S Ct 183.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 897 F2d 536.

No. 90-5244. Bert Le Ward, Petitioner v Guy H. Hunt, et al.

498 US 868, 112 L Ed 2d 147, 111 S Ct 184, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 896 F2d 558.

No. 90-5245. Vincent X. Lee, Petitioner v William M. Armontrout, Warden, et al.

498 US 868, 112 L Ed 2d 147, 111 S Ct 184, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1574.

No. 90-5247. Larry Graham, Jr., Petitioner v W. Warner, Warden

498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5250. Chester N. Berman, Petitioner v John R. Griffiths, III, and Diane M. Griffiths

498 US 868, 112 L Ed 2d 147, 111 S Ct 184, reh den 498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 21.

No. 90-5251. Oscar S. Antolin, Petitioner v Department of Justice

498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 895 F2d 1395.

No. 90-5252. Kenneth Emmanuel Hartley, Petitioner v Texas

498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

October 1, 1990. Petition for writ

of certiorari to the Court of Criminal Appeals of Texas denied.

No. 90-5253. Herman L. Melvin, Petitioner v Louis W. Sullivan, Secetary of Health and Human Services

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 33.

No. 90-5254. Wayne P. Green, Petitioner v United States

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5255. Daniel Burke, Petitioner v United States

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 260.

No. 90-5256. John David Thorpe, Petitioner v United States

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 291.

No. 90-5258. Boyd E. Graves, Petitioner v United States, et al.

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 145.

No. 90-5259. David Engel, Petitioner v John Sissel, et al.

498 US 868, 112 L Ed 2d 148, 111 S Ct 185.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 508.

No. 90-5260. Edison Caceras-Garcia, Petitioner v United States

498 US 868, 112 L Ed 2d 148, 111 S Ct 186.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 34.

No. 90-5261. John Brown, Petitioner v Bill Armontrout, Warden

498 US 868, 112 L Ed 2d 149, 111 S Ct 186.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 84.

No. 90-5262. Raymond Clarke, Petitioner v United States

498 US 868, 112 L Ed 2d 149, 111 S Ct 186.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 639.

No. 90-5264. James W. Cotton, Jr., Petitioner v New Mexico

498 US 869, 112 L Ed 2d 149, 111 S Ct 186, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of New Mexico denied.

No. 90-5265. Michael Salvador Cruz, Petitioner v Daniel J. McCarthy, Director, California Department of Corrections

498 US 869, 112 L Ed 2d 149, 111 S Ct 186.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 38.

No. 90-5267. Makram Tadros, Petitioner v D. Jackson Coleman, et al.

498 US 869, 112 L Ed 2d 149, 111 S Ct 186, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 10.

No. 90-5268. Tomas Nordelo Casas, Petitioner v United States

498 US 869, 112 L Ed 2d 149, 111 S Ct 187.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 150.

No. 90-5269. Cheng Wang, Petitioner v California State University Board of Trustees, et al.

498 US 869, 112 L Ed 2d 150, 111 S Ct 187.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5271. Anthony Sanchez, Petitioner v George E. Sullivan, Warden

498 US 869, 112 L Ed 2d 150, 111 S Ct 187.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5272. Joseph A. Bonacci, Petitioner v United States

498 US 869, 112 L Ed 2d 150, 111 S Ct 187.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5273. Victor Manuel Bautista-Garcia, Petitioner v United States

498 US 869, 112 L Ed 2d 150, 111 S Ct 187.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1374.

No. 90-5274. James Leon Pierce, Petitioner v Kentucky

498 US 869, 112 L Ed 2d 150, 111 S Ct 187.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

No. 90-5276. Jeffrey Balawajder, Petitioner v Freida C. Jones

498 US 869, 112 L Ed 2d 150, 111 S Ct 188.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied.

No. 90-5277. Derek Lee Vinson, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 869, 112 L Ed 2d 150, 111 S Ct 188.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5278. Mary Louise Gordon, Petitioner v Art Agnos, et al.

498 US 869, 112 L Ed 2d 151, 111 S Ct 188, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5279. Mary Louise Gordon, Petitioner v Michael J. Bowers, Jr.

498 US 869, 112 L Ed 2d 151, 111 S Ct 188, reh den 498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5280. Chester A. Brakke, Alice M. Brakke, and Ronald Brakke, Petitioners v Dakota Bank and Trust Co. of Fargo, et al.

498 US 869, 112 L Ed 2d 151, 111 S Ct 188.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of North Dakota denied.

Same case below, 453 NW2d 610.

No. 90-5281. Verna Tyler, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 869, 112 L Ed 2d 151, 111 S Ct 188.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1219.

No. 90-5282. Mary Jessica Corona, Petitioner v United States

498 US 870, 112 L Ed 2d 151, 111 S Ct 189.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 41.

No. 90-5283. Colonel Nyati Bolt, Petitioner v Frank C. Blackburn, et al.

498 US 870, 112 L Ed 2d 151, 111 S Ct 189.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 90-5284. Luis Andrade, Petitioner v United States

498 US 870, 112 L Ed 2d 151, 111 S Ct 189.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 859 F2d 1067.

No. 90-5285. Daniel Eugene Bifield, Petitioner v Gary Henman, Warden

498 US 870, 112 L Ed 2d 152, 111 S Ct 189.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5286. Ronald Thurman, Petitioner v United States

498 US 870, 112 L Ed 2d 152, 111 S Ct 189.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 829.

No. 90-5287. William C. Dodson, Petitioner v Altoona Mirror Publishers

498 US 870, 112 L Ed 2d 152, 111 S Ct 189.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1216.

No. 90-5288. Robert Vernon Griffin, Petitioner v United States

498 US 870, 112 L Ed 2d 152, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 828.

No. 90-5289. Ken Roy Backas, Petitioner v United States

498 US 870, 112 L Ed 2d 152, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 901 F2d 1528.

No. 90-5291. Alvin Dale Barner, Petitioner v L. W. Hoffman, Warden, et al.

498 US 870, 112 L Ed 2d 152, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 894 F2d 401.

No. 90-5296. Larry Darnell Frazier, Petitioner v Oklahoma

498 US 870, 112 L Ed 2d 153, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 90-5298. Alonzo Brown, Petitioner v New York

498 US 870, 112 L Ed 2d 153, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 158 App Div 2d 461, 550 NYS2d 913.

No. 90-5299. Alphonsus LHSF Huang-Tze Chou, Petitioner v University of Maryland

498 US 870, 112 L Ed 2d 153, 111 S Ct 190.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 250.

No. 90-5300. Andre Shaw, Petitioner v Donald T. Vaughn, Superintendent, State Correctional Institution (and Diagnostic and Classification Center) at Graterford, et al.

498 US 870, 112 L Ed 2d 153, 111 S Ct 191.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5302. Donald L. Gaerttner, Petitioner v Thomas A. Fulcomer, et al.

498 US 870, 112 L Ed 2d 153, 111 S Ct 191.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5303. Joseph Alexander Armstrong, Petitioner v United States

498 US 870, 112 L Ed 2d 153, 111 S Ct 191.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1238.

No. 90-5304. Ronald Chandler, Petitioner v Carl White, et al.

498 US 871, 112 L Ed 2d 154, 111 S Ct 191, reh den 498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1574.

No. 90-5306. Kevin Mayfield, Petitioner v United States

498 US 871, 112 L Ed 2d 154, 111 S Ct 191.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5307. Clarence Duke McGann, Petitioner v Herbert Biderman, et al.

498 US 871, 112 L Ed 2d 154, 111 S Ct 191, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 543.

No. 90-5310. Taiseer Hammad and Eid Hammad, Petitioners v United States

498 US 871, 112 L Ed 2d 154, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1062.

No. 90-5311. Robert Lee Hagood, Petitioner v Donald T. Vaughn, Superintendent, State Correctional Institution at Graterford

498 US 871, 112 L Ed 2d 154, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 694.

No. 90-5312. G. Warren Lawson, Petitioner v Secretary of Health and Human Services

498 US 871, 112 L Ed 2d 154, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 888 F2d 126.

No. 90-5313. Emmett Lovell Nabors, Petitioner v United States

498 US 871, 112 L Ed 2d 154, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 901 F2d 1351.

No. 90-5314. Brian Demetrius Murray, Petitioner v United States

498 US 871, 112 L Ed 2d 155, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1532.

No. 90-5315. Lawrence Graham Leroux, Petitioner v North Carolina

498 US 871, 112 L Ed 2d 155, 111 S Ct 192.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of North Carolina denied.

Same case below, 326 NC 368, 390 SE2d 314.

No. 90-5316. Bruce Laudine Kelly, Petitioner v United States

498 US 871, 112 L Ed 2d 155, 111 S Ct 193.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 41.

No. 90-5318. Rose Ann Meckley, Petitioner v West Virginia Department of Corrections, et al.

498 US 871, 112 L Ed 2d 155, 111 S Ct 193.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1530.

No. 90-5320. Nicholas H. Kontakis, Petitioner v Margaret Kontakis

498 US 871, 112 L Ed 2d 155, 111 S Ct 193.

October 1, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-5323. Johnny Armstrong, Jr., Petitioner v United States

498 US 871, 112 L Ed 2d 155, 111 S Ct 193.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5324. Lloyd Louis Valdez, Petitioner v Colorado

498 US 871, 112 L Ed 2d 156, 111 S Ct 193.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Colorado denied.

Same case below, 789 P2d 406.

No. 90-5326. Leonard A. Fulgham, Petitioner v Al Gomez, Warden

498 US 872, 112 L Ed 2d 156, 111 S Ct 194.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 40.

No. 90-5329. Barron Magee, Petitioner v Louisiana

498 US 872, 112 L Ed 2d 156, 111 S Ct 194.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 558 So 2d 569.

No. 90-5330. Clifford Scott Michel, Petitioner v California

498 US 872, 112 L Ed 2d 156, 111 S Ct 194.

October 1, 1990. Petition for writ of certiorari to the Appellate Department, Superior Court of California, County of Los Angeles, denied.

No. 90-5331. Delano Hale, Petitioner v United States

498 US 872, 112 L Ed 2d 156, 111 S Ct 194.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 35.

No. 90-5335. Michael Sindram, Petitioner v Richard Garabedi

498 US 872, 112 L Ed 2d 156, 111 S Ct 194, reh den 598 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 1, 1990. Petition for writ of certiorari to the Circuit Court of Maryland, Montgomery County, denied.

No. 90-5336. Miguel Gustavo Garcia-Vada, Petitioner v United States

No. 90-5398. Angel Moran, Petitioner v United States

498 US 872, 112 L Ed 2d 156, 111 S Ct 194, 111 S Ct 195.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 903 F2d 828.

No. 90-5337. Victor M. Morales, Petitioner v United States

498 US 872, 112 L Ed 2d 157, 111 S Ct 195.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5338. Leazo Hendrix, Petitioner v Board of Education, City of Chicago, et al.

498 US 872, 112 L Ed 2d 157, 111 S Ct 195.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5339. Roy L. Jackson, Petitioner v Millie Otey

498 US 872, 112 L Ed 2d 157, 111 S Ct 195.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5340. Beatrice Jones McGlory, Petitioner v New Orleans Local 124 Welfare Fund of the Tile, Marble, Terrazo Finishers & Shopmen International Inc., et al.

498 US 872, 112 L Ed 2d 157, 111 S Ct 195.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5341. Robert Leppaluoto, et ux., Petitioners v George Nazarian, dba The Law Clinic

498 US 872, 112 L Ed 2d 157, 111 S Ct 195, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1417.

No. 90-5342. Harold Franklin Holloran, Petitioner v Edward Murray, Director, Virginia Department of Corrections

498 US 872, 112 L Ed 2d 157, 111 S Ct 196.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 252.

No. 90-5344. Eric Parker, Petitioner v United States

498 US 872, 112 L Ed 2d 158, 111 S Ct 196.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 903 F2d 91.

No. 90-5345. Leonard D. Singleton, Petitioner v United States

498 US 872, 112 L Ed 2d 158, 111 S Ct 196.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 471.

No. 90-5346. Booker Wellington, Petitioner v United States

498 US 873, 112 L Ed 2d 158, 111 S Ct 196.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 895 F2d 1335.

No. 90-5347. David Lemeul Grasty, Petitioner v Denise M. Quarles, Superintendent, Riverside Correctional Facility

498 US 873, 112 L Ed 2d 158, 111 S Ct 196.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 1568.

No. 90-5348. Audrey J. Getrost, Petitioner v United States

498 US 873, 112 L Ed 2d 158, 111 S Ct 196, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5349. Robert Gerald Knott, Petitioner v United States

498 US 873, 112 L Ed 2d 158, 111 S Ct 197.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 894 F2d 1119.

No. 90-5350. Joseph Taylor, Petitioner v Eighth Judicial District Court of Nevada, Clark County, et al.

498 US 873, 112 L Ed 2d 158, 111 S Ct 197.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 1043, 835 P2d 68.

No. 90-5351. Michael Sindram, Petitioner v Steuben County, New York, et al.

498 US 873, 112 L Ed 2d 159, 111 S Ct 197, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 281 App DC 24, 886 F2d 442.

No. 90-5354. Theodore Shipes, Petitioner v Jon P. Galley, Warden, et al.

498 US 873, 112 L Ed 2d 159, 111 S Ct 197, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1566.

No. 90-5355. Robert Pettit, Petitioner v United States

498 US 873, 112 L Ed 2d 159, 111 S Ct 197.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 903 F2d 1336.

No. 90-5357. Thomas "Sonny" Frazier, Petitioner v New York

498 US 873, 112 L Ed 2d 159, 111 S Ct 197.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Fourth Judicial Department, denied.

Same case below, 159 App Div 2d 1017, 552 NYS2d 467.

No. 90-5359. Stephen Bishop, Petitioner v John Doe 1, et al.

498 US 873, 112 L Ed 2d 159, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 902 F2d 809.

No. 90-5360. Edward N. Carlton, Petitioner v John Jabe, et al.

498 US 873, 112 L Ed 2d 159, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 706.

No. 90-5361. Arthur Jackson Burton, Petitioner v Theodore Nault, et al.

498 US 873, 112 L Ed 2d 160, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 4.

No. 90-5364. Daniel Gene Tate, Petitioner v United States

498 US 873, 112 L Ed 2d 160, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 90-5365. Lee Scott, Petitioner v Paul James, et al.

498 US 873, 112 L Ed 2d 160, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 672.

No. 90-5366. Joseph Wood, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 874, 112 L Ed 2d 160, 111 S Ct 198.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5367. Anthony Jose Garza, Petitioner v Texas

498 US 874, 112 L Ed 2d 160, 111 S Ct 199.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, First District, denied.

No. 90-5368. Raymond Stoddard, Petitioner v United States

498 US 874, 112 L Ed 2d 160, 111 S Ct 199.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-5370. James William Tatlis, Petitioner v California

498 US 874, 112 L Ed 2d 160, 111 S Ct 199.

October 1, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5371. Michael Sindram, Petitioner v Consumer Protection Commission of Prince George's County, et al.

498 US 874, 112 L Ed 2d 161, 111 S Ct 199, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 1, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

No. 90-5373. Michael Sindram, Petitioner v Robert Abrams, et al.

498 US 874, 112 L Ed 2d 161, 111 S Ct 199, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-5377. John Fox, Petitioner v United States

498 US 874, 112 L Ed 2d 161, 111 S Ct 199.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 902 F2d 1508.

No. 90-5378. Bradley Owen Austin, Petitioner v United States

498 US 874, 112 L Ed 2d 161, 111 S Ct 200.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 743.

No. 90-5379. William Guy Antonelli, Petitioner v Arizona

498 US 874, 112 L Ed 2d 161, 111 S Ct 200.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division Two, denied.

No. 90-5384. Doris East, Petitioner v John B. Holmes, Jr.

498 US 874, 112 L Ed 2d 161, 111 S Ct 200, reh den 498 US 1018, 112 L Ed 2d 598, 111 S Ct 595.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

No. 90-5388. Ricardo Beas, Petitioner v California

498 US 874, 112 L Ed 2d 161, 111 S Ct 200, reh den 498 US 995, 112 L Ed 2d 559, 111 S Ct 551.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

No. 90-5389. Carolyn Price Chadwick, Petitioner v Acco-Babcock, Inc.

498 US 874, 112 L Ed 2d 162, 111 S Ct 200, reh den 498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 250.

No. 90-5391. George Warren Fields, Petitioner v United States

498 US 874, 112 L Ed 2d 162, 111 S Ct 200.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 906 F2d 139.

No. 90-5394. Henderson Duval Houghton, Petitioner v Glenn Osborne, et al.

498 US 874, 112 L Ed 2d 162, 111 S Ct 201.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 156.

No. 90-5396. Hibbard Kendrick, Petitioner v Wade D. Blankenship, Warden

498 US 874, 112 L Ed 2d 162, 111 S Ct 201.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1565.

No. 90-5397. Keith Moon, Petitioner v United States

498 US 874, 112 L Ed 2d 162, 111 S Ct 201.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 903 F2d 91.

No. 90-5401. David Na'im, Petitioner v Charles Martin, Warden

498 US 875, 112 L Ed 2d 162, 111 S Ct 201.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 151.

No. 90-5402. Judge Mathis, Jr., Petitioner v United States

498 US 875, 112 L Ed 2d 162, 111 S Ct 201.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 908 F2d 969.

No. 90-5404. Cameron Leonard Patterson, Petitioner v United States

498 US 875, 112 L Ed 2d 163, 111 S Ct 201.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 511.

No. 90-5406. John Richard Clark, Petitioner v Kentucky

498 US 875, 112 L Ed 2d 163, 111 S Ct 202.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

No. 90-5407. Richard Frank Gardner, Petitioner v United States

498 US 875, 112 L Ed 2d 163, 111 S Ct 202.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 905 F2d 1432.

No. 90-5409. George J. Guaracino, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 875, 112 L Ed 2d 163, 111 S Ct 202, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 449.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 962.

No. 90-5418. Norman Malcolm Barton, Petitioner v United States

498 US 875, 112 L Ed 2d 163, 111 S Ct 202.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1140.

No. 90-5419. Cecil L. Lewis, Petitioner v United States

498 US 875, 112 L Ed 2d 163, 111 S Ct 202.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 576.

No. 90-5424. Nicholas A. Borsello, Jr., Petitioner v Joseph Mazurkiewicz, Superintendent, State Correctional Institution at Rockview

498 US 875, 112 L Ed 2d 164, 111 S Ct 202.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5425. Jorge Alberto Alvarez, Petitioner v United States

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 576 A2d 713.

No. 90-5427. Eabie McLean, aka Erbie McLean, Petitioner v United States

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 216.

No. 90-5428. John David Harris, Petitioner v George Alexander, Warden

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 33.

No. 90-5429. Roman Alvarez-Quiroga, Petitioner v United States

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 901 F2d 1433.

No. 90-5435. Roger Rutledge, Petitioner v United States

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1127.

No. 90-5436. Wade Freeman Whitton, Petitioner v United States

498 US 875, 112 L Ed 2d 164, 111 S Ct 203.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 903 F2d 825.

No. 90-5440. Errol Hendricks, Petitioner v New York

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 158 App Div 2d 715, 552 NYS2d 162.

No. 90-5443. Willard K. O'Dell, Petitioner v United States

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 509.

No. 90-5445. Monucle Colin, Petitioner v United States

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1142.

No. 90-5458. John Henry Mayberry, Petitioner v Patrick W. Keohane, Warden, et al.

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5461. Richard Reyes, Petitioner v United States

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 144.

No. 90-5465. Jacob Babajide Abebowale Grillo, Petitioner v United States

498 US 876, 112 L Ed 2d 165, 111 S Ct 204.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 708.

No. 90-5466. Isiah Evans, III, Petitioner v Bureau of Prisons, et al.

498 US 876, 112 L Ed 2d 166, 111 S Ct 205.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5470. Santiago Lopez-Zerato, Petitioner v United States

No. 90-5511. Lorenzo Armando Mitoren-Virgen, Petitioner v United States

498 US 876, 112 L Ed 2d 166, 111 S Ct 205.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same cases below, 902 F2d 1580.

No. 90-5474. David Eugene McCabe, Petitioner v United States

498 US 876, 112 L Ed 2d 166, 111 S Ct 205.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 41.

No. 90-5476. Juan Dedios Pena, Petitioner v United States

498 US 876, 112 L Ed 2d 166, 111 S Ct 205.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 714.

No. 90-5479. Ramiro Rodriguez, Petitioner v United States

498 US 876, 112 L Ed 2d 166, 111 S Ct 205.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 905 F2d 1535.

No. 90-5480. Aaron Lowden, Petitioner v United States

498 US 876, 112 L Ed 2d 166, 111 S Ct 206.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 900 F2d 213 and 905 F2d 1448.

No. 90-5482. Richard Willis Wesley Allen, Petitioner v Wayne Estelle, Warden, et al.

498 US 876, 112 L Ed 2d 166, 111 S Ct 206.

October 1, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5486. Stephen W. Dennis, Petitioner v United States

498 US 876, 112 L Ed 2d 167, 111 S Ct 206.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 591.

No. 90-5500. Orville Baker, Petitioner v United States

498 US 876, 112 L Ed 2d 167, 111 S Ct 206.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 1100.

No. 90-5501. Norman Dale Baugh, Petitioner v United States

498 US 877, 112 L Ed 2d 167, 111 S Ct 206.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5502. Douglas Dobynes, Petitioner v United States

498 US 877, 112 L Ed 2d 167, 111 S Ct 206.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 1192.

No. 90-5507. Willie Taw Newsome, Petitioner v United States

498 US 877, 112 L Ed 2d 167, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 898 F2d 119.

No. 90-5508. Darrell Jung, Petitioner v Charles Miller, Superintendent, Correctional Industrial Complex, Pendleton

498 US 877, 112 L Ed 2d 167, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5513. Gilbert Solomon Aguirre, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1580.

No. 90-5516. Michael Trammell, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1542.

No. 90-5526. John Sullivan, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 895 F2d 1030.

No. 90-5527. Paul Byrd, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 207.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5531. William Charles Longbehn, aka William Charles Sisson, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 635.

No. 90-5540. Richard F. Kaufhold, Petitioner v Clarence L. Jackson, Jr., et al.

498 US 877, 112 L Ed 2d 168, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 29.

No. 90-5554. Tony Michael Morales, Petitioner v United States

498 US 877, 112 L Ed 2d 168, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5560. James W. Hollowell, Petitioner v United States

498 US 877, 112 L Ed 2d 169, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5566. Sergio M. Cuevas-Esquivel, Petitioner v United States

498 US 877, 112 L Ed 2d 169, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 905 F2d 510.

No. 89-1560. Richard Morrison, Petitioner v Maine

498 US 877, 112 L Ed 2d 169, 111 S Ct 208.

October 1, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied. Justice White would grant certiorari.

Same case below, 567 A2d 1350.

No. 89-1661. Northern California District Council of Laborers, et al., Petitioners v Mesa Verde Construction Co.

No. 89-1874. Mesa Verde Construction Co., Petitioner v Northern California District Council of Laborers, et al.

498 US 877, 112 L Ed 2d 169, 111 S Ct 209.

October 1, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White would grant certiorari.

Same cases below, 895 F2d 516.

No. 89-1797. Juan Ramon Matta-Ballesteros, Petitioner v Gary L. Henman, Warden

498 US 878, 112 L Ed 2d 169, 111 S Ct 209.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice White would grant certiorari.

Same case below, 896 F2d 255.

No. 89-1829. FMC Corporation, Petitioner v Todd Gander

498 US 878, 112 L Ed 2d 169, 111 S Ct 209.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice White would grant certiorari.

Same case below, 892 F2d 1373.

No. 89-1921. Anthony J. Varca and Mark A. Varca, Petitioners v United States

498 US 878, 112 L Ed 2d 170, 111 S Ct 209.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White would grant certiorari.

Same case below, 896 F2d 900.

No. 89-1924. Vito Spillone, Petitioner v United States

498 US 878, 112 L Ed 2d 170, 111 S Ct 210.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White would grant certiorari.

Same case below, 879 F2d 514.

No. 89-7492. Christ Savides, Petitioner v United States

498 US 878, 112 L Ed 2d 170, 111 S Ct 210.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice White would grant certiorari.

Same case below, 898 F2d 1218.

No. 90-120. Alfreda Dillard, et al., Petitioners v Joe Frank Harris, et al.

498 US 878, 112 L Ed 2d 170, 111 S Ct 210.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice White would grant certiorari.

Same case below, 885 F2d 1549.

No. 90-139. Texas, Petitioner v John Skelton

498 US 878, 112 L Ed 2d 170, 111 S Ct 210.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied. Justice White would grant certiorari.

Same case below, 795 SW2d 162.

No. 90-169. Rosetta N. Davis, et al., Petitioners v Tennessee Department of Employment Security, et al.

498 US 878, 112 L Ed 2d 170, 111 S Ct 210.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice White would grant certiorari.

Same case below, 901 F2d 1327, 103 ALR Fed 607.

No. 90-194. Inland-Rome, Inc., Petitioner v C. L. Rhodes, Jr., et al.

498 US 878, 112 L Ed 2d 171, 111 S Ct 211.

October 1, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied. Justice White would grant certiorari.

Same case below, 195 Ga App 39, 392 SE2d 270.

No. 90-224. Jon F. Barnes, et al., Petitioners v GenCorp Inc., et al.

498 US 878, 112 L Ed 2d 171, 111 S Ct 211.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice White would grant certiorari.

Same case below, 896 F2d 1457.

No. 89-1726. Mississippi Employment Security Commission, Petitioner v Deborah McGlothin

498 US 879, 112 L Ed 2d 171, 111 S Ct 211.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Mississippi denied.

Same case below, 556 So 2d 324.

No. 89-1771. North Carolina, et al., Petitioners v Saint Luke Gregory, Jr.

498 US 879, 112 L Ed 2d 171, 111 S Ct 211.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 705.

No. 89-1843. Michigan, Petitioner v Albert Lee, III

498 US 879, 112 L Ed 2d 171, 111 S Ct 211.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Michigan denied.

Same case below, 434 Mich 59, 450 NW2d 883.

No. 89-1867. Oregon, Petitioner v Jeffrey Scott Wagner; Oregon, Petitioner v Stephen Lewis Farrar; and Oregon, Petitioner v Reyes Miranda

498 US 879, 112 L Ed 2d 171, 111 S Ct 212.

October 1, 1990. The motion of respondents for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Oregon denied.

Same cases below, 309 Or 5, 786 P2d 93 (first case); 309 Or 132, 786 P2d 161 (second case); 309 Or 121, 786 P2d 155 (third case).

No. 89-1904. Rafael Hernandez Colon, Governor of Puerto Rico, et al., Petitioners v Carlos Morales Feliciano, et al.

498 US 879, 112 L Ed 2d 172, 111 S Ct 212.

October 1, 1990. The motion of respondents for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

No. 89-2021. Michael Parsons, Warden, and Robert H. Henry, Attorney General of Oklahoma, Petitioners v Willie Gene Gamble

498 US 879, 112 L Ed 2d 172, 111 S Ct 212.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 898 F2d 117.

No. 90-112. Eddie S. Ylst, Warden, Petitioner v Venson Lane Myers

498 US 879, 112 L Ed 2d 172, 111 S Ct 212.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 417.

No. 90-153. Bill Armontrout, Warden, Petitioner v Edward Parton

498 US 879, 112 L Ed 2d 172, 111 S Ct 212.

October 1, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 895 F2d 1214.

No. 89-1834. D. T., a Minor, by his Legally Appointed Guardians, et al., Petitioners v Independent School District No. 16 of Pawnee County, Oklahoma

498 US 879, 112 L Ed 2d 172, 111 S Ct 213.

October 1, 1990. The motion of petitioners for leave to file amended petition is granted. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 894 F2d 1176.

No. 89-1854. American National Can Corporation, et al., Petitioners v Washington Department of Revenue, et al.

498 US 880, 112 L Ed 2d 173, 111 S Ct 213.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Washington denied. Justice Kennedy would grant certiorari.

Same case below, 114 Wash 2d 236, 787 P2d 545.

No. 89-1890. Owens-Corning Fiberglas Corporation, et al., Petitioners v District of Columbia

498 US 880, 112 L Ed 2d 173, 111 S Ct 213.

October 1, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 572 A2d 394.

No. 90-43. American Bankers Insurance Company of Florida, Petitioner v Paymaster Corporation

498 US 880, 112 L Ed 2d 173, 111 S Ct 213.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 892 F2d 1047.

No. 89-1960. Edward A. McConwell and Clayton E. Dickey, Petitioners v International Business Machines Corporation

498 US 880, 112 L Ed 2d 173, 111 S Ct 213.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Blackmun took no part in the consideration or decision of this petition.

Same case below, 896 F2d 546.

No. 89-1974. Pulitzer Publishing Company, et al., Petitioners v Certain Interested Individuals, et al.

498 US 880, 112 L Ed 2d 173, 111 S Ct 214.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice White and Justice Blackmun would grant certiorari. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 895 F2d 460.

No. 89-1997. New Orleans Baptist Theological Seminary, Petitioner v Rudolph G. Babcock

498 US 880, 112 L Ed 2d 173, 111 S Ct 214.

October 1, 1990. The motion of

respondent for leave to proceed in forma pauperis is granted. The motion of Baptist Joint Committee on Public Affairs, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the Court of Appeal of Louisiana, Fourth Circuit, denied. Justice Blackmun would grant certiorari.

Same case below, 554 So 2d 90.

No. 89-2017. John A. Farnsworth, Petitioner v Sea-Land Service, Inc., et al.

498 US 880, 112 L Ed 2d 174, 111 S Ct 214.

October 1, 1990. The motion of petitioner for leave to proceed as a seaman is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 552.

No. 89-6935. Mark Maragh, Petitioner v United States

498 US 880, 112 L Ed 2d 174, 111 S Ct 214.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 282 App DC 256, 894 F2d 415.

No. 89-7188. Thomas Mitchell Deboue, Petitioner v Louisiana

498 US 881, 112 L Ed 2d 174, 111 S Ct 215, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 552 So 2d 355.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7355. Larry Eyler, Petitioner v Illinois

498 US 881, 112 L Ed 2d 174, 111 S Ct 215, reh den 498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 133 Ill 2d 173, 139 Ill Dec 756, 549 NE2d 268.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7430. Mumia Abu-Jamal, Petitioner v Pennsylvania

498 US 881, 112 L Ed 2d 175, 111 S Ct 215, reh den 498 US 993, 112 L Ed 2d 551, 111 S Ct 541.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

Same case below, 521 Pa 188, 555 A2d 846.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7444. William R. Jones, Petitioner v Missouri

498 US 881, 112 L Ed 2d 175, 111 S Ct 215.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 784 SW2d 789.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7468. Danny Joe Bradley, Petitioner v Alabama

498 US 881, 112 L Ed 2d 175, 111 S Ct 216.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7473. Gregory D. Resnover, Petitioner v Indiana

498 US 881, 112 L Ed 2d 175, 111 S Ct 216.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Indiana denied.

Same case below, 547 NE2d 814.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7476. Michael W. Ryan, Petitioner v Nebraska

498 US 881, 112 L Ed 2d 176, 111 S Ct 216.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Nebraska denied.

Same case below, 233 Neb 74, 444 NW2d 610.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7491. James Harvey Callahan, Petitioner v Alabama

498 US 881, 112 L Ed 2d 176, 111 S Ct 216.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 557 So 2d 1311.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7570. John Michael Davis, Petitioner v Ralph Kemp, Warden

498 US 881, 112 L Ed 2d 176, 111 S Ct 217, reh den 498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7577. Terry Lee Lowery, Petitioner v Indiana

498 US 881, 112 L Ed 2d 176, 111 S Ct 217.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Indiana denied.

Same case below, 547 NE2d 1046.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorafi and vacate the death sentence in this case.

No. 89-7616. James L. Pitts, Petitioner v Georgia

498 US 881, 112 L Ed 2d 177, 111 S Ct 217, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 259 Ga 745, 386 SE2d 351.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7617. David Brewer, Petitioner v Ohio

498 US 881, 112 L Ed 2d 177, 111 S Ct 218, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 48 Ohio St 3d 50, 549 NE2d 491.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7632. Roy Bruce Smith, Petitioner v Virginia

498 US 881, 112 L Ed 2d 177, 111 S Ct 221.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied.

Same case below, 239 Va 243, 389 SE2d 871.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7638. Willie James Hall, Petitioner v Georgia

498 US 881, 112 L Ed 2d 177, 111 S Ct 221, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ

of certiorari to the Supreme Court of Georgia denied.

Same case below, 259 Ga 412, 383 SE2d 128.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7640. Nollie Lee Martin, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 881, 112 L Ed 2d 178, 111 S Ct 22.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 891 F2d 807.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7661. Joseph M. Giarratano, Petitioner v Raymond K. Procunier, Director, Virginia Department of Corrections

498 US 881, 112 L Ed 2d 178, 111 S Ct 222.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 891 F2d 483.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7672. Kenneth Burton Lang, Jr., Petitioner v California

498 US 881, 112 L Ed 2d 178, 111 S Ct 224.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 49 Cal 3d 991, 264 Cal Rptr 386, 782 P2d 627.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7719. Mark David Breakiron, Petitioner v Pennsylvania

498 US 881, 112 L Ed 2d 179, 111 S Ct 224.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied.

Same case below, 524 Pa 282, 571 A2d 1035.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7732. Paul William Scott, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 881, 112 L Ed 2d 179, 111 S Ct 224.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 891 F2d 800.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7786. Eddie William Finney, Petitioner v Ralph Kemp, Warden

498 US 881, 112 L Ed 2d 179, 111 S Ct 225.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7793. Richard Dean McMillin, Petitioner v Missouri

498 US 881, 112 L Ed 2d 179, 111 S Ct 225, reh den 498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 783 SW2d 82.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7806. Ronald O'Shea, Petitioner v Pennsylvania

498 US 881, 112 L Ed 2d 180, 111 S Ct 225.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied.

Same case below, 523 Pa 384, 567 A2d 1023.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7835. Roger Collins, Petitioner v Walter Zant, Warden

498 US 881, 112 L Ed 2d 180, 111 S Ct 225.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 892 F2d 1502.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7839. Robert Jackson Thompson, Petitioner v California

498 US 881, 112 L Ed 2d 180, 111 S Ct 226, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 134, 266 Cal Rptr 309, 785 P2d 857.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7884. Michael Anthony Jackson, Petitioner v California

498 US 881, 112 L Ed 2d 181, 111 S Ct 226.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 49 Cal 3d 1170, 264 Cal Rptr 852, 783 P2d 211.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5003. Vernon Lamar Sattiewhite, Petitioner v Texas

498 US 881, 112 L Ed 2d 181, 111 S Ct 226.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 786 SW2d 271.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5015. Carlton Gary, Petitioner v Georgia

498 US 881, 112 L Ed 2d 181, 111 S Ct 226, reh den 498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 260 Ga 38, 389 SE2d 218.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5027. Joseph Amrine, Petitioner v Missouri

498 US 881, 112 L Ed 2d 181, 111 S Ct 227.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 785 SW2d 531.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5029. Larry Gene Bell, Petitioner v South Carolina

498 US 881, 112 L Ed 2d 182, 111 S Ct 227.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 302 SC 18, 393 SE2d 364.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5051. Dewey George Moore, Petitioner v Oklahoma

498 US 881, 112 L Ed 2d 182, 111 S Ct 227.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

Same case below, 788 P2d 387.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5066. Nathson Fields, Petitioner v Illinois

No. 90-5328. Earl Hawkins, Petitioner v Illinois

498 US 881, 112 L Ed 2d 182, 111 S Ct 227, 111 S Ct 228, reh den 498 US 994, 112 L Ed 2d 555, 111 S Ct 547 and reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

October 1, 1990. Petitions for writs of certiorari to the Supreme Court of Illinois denied.

Same cases below, 135 Ill 2d 18, 142 Ill Dec 200, 552 NE2d 791.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in these cases.

No. 90-5109. William Franklin, Petitioner v Illionis

498 US 881, 112 L Ed 2d 182, 111 S Ct 228, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 135 Ill 2d 78, 142 Ill Dec 152, 552 NE2d 743.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d

859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5123. Derrick Jamison, Petitioner v Ohio

498 US 881, 112 L Ed 2d 183, 111 S Ct 228.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 49 Ohio St 3d 182, 552 NE2d 180.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5148. Anthony Green, Petitioner v South Carolina

498 US 881, 112 L Ed 2d 183, 111 S Ct 229, reh den 498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 301 SC 347, 392 SE2d 157.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5152. Eric Clemmons, Petitioner v Missouri

498 US 882, 112 L Ed 2d 183, 111 S Ct 229.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 785 SW2d 524.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5171. Tony Powell, Petitioner v Ohio

498 US 882, 112 L Ed 2d 183, 111 S Ct 229.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 49 Ohio St 3d 255, 552 NE2d 191.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5211. Joseph Savino, Petitioner v Virginia

498 US 882, 112 L Ed 2d 184, 111 S Ct 229.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied.

Same case below, 239 Va 534, 391 SE2d 276.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5217. John Hightower, Petitioner v Georgia

498 US 882, 112 L Ed 2d 184, 111 S Ct 230, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 259 Ga 770, 386 SE2d 509.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5222. Grover Reed, Petitioner v Florida

498 US 882, 112 L Ed 2d 184, 111 S Ct 230.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 560 So 2d 203.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5236. Varnall Weeks, Petitioner v Alabama

498 US 882, 112 L Ed 2d 184, 111 S Ct 230, reh den 498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

October 1, 1990. Petition for writ

of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 568 So 2d 864.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5297. Keith B. Canaan, Petitioner v Indiana

498 US 882, 112 L Ed 2d 185, 111 S Ct 230.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Indiana denied.

Same case below, 541 NE2d 894.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5305. Jesse Dewayne Jacobs, Petitioner v Texas

498 US 882, 112 L Ed 2d 185, 111 S Ct 231.

October 1, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 787 SW2d 397.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5444. Samuel Moreland, Petitioner v Ohio

498 US 882, 112 L Ed 2d 185, 111 S Ct 231.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 50 Ohio St 3d 58, 552 NE2d 894.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5453. Eric Adam Schneider, Petitioner v Missouri

498 US 882, 112 L Ed 2d 186, 111 S Ct 231.

October 1, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 787 SW2d 718.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7631. William Frank Parker, Petitioner v Arkansas

498 US 883, 112 L Ed 2d 186, 111 S Ct 218.

October 1, 1990. The petition for a writ of certiorari to the Supreme Court of Arkansas is denied.

Same case below, 300 Ark 360, 779 SW2d 156.

Justice Marshall, dissenting.

It is well established "that the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient" to support conviction. Burks v United States, 437 US 1, 18, 57 L Ed 2d 1, 98 S Ct 2141 (1978). Nonetheless, the Arkansas Supreme Court concluded in this case that reversal for failure to prove an essential element of one statutory formulation of capital murder poses no bar to reprosecution under another statutory formulation of the same offense, because the State's decision to prosecute a defendant under the "wrong" murder statute is mere "trial error." Because I believe that this conclusion reflects a profound misreading of our double jeopardy precedents, I would grant the petition.

I

Petitioner was twice tried, convicted, and sentenced to death for murdering James and Sandra Warren. He was initially convicted for felony murder on the theory that he had murdered the Warrens while burglarizing their home. The Arkansas Supreme Court reversed.[1] See Parker v State, 292 Ark 421, 731 SW2d 756 (1987) (Parker I). Reviewing the statutory elements of felony murder, the court concluded that the State's felony-murder statute "cannot be read to encompass the facts of this case." Id., at 425, 731 SW2d, at 758. The Arkansas capital felony-murder statute requires the State to prove that the defendant caused the death of another "in the course of and in furtherance of the [underlying] felony." Ark Code Ann § 5-10-101(a)(1) (1987 and Supp 1989). "The state's proof," the court explained, "showed that [petitioner] followed Mr. Warren into the house for only one purpose—to commit the murders of the Warrens." Parker I, 292 Ark, at 425, 731 SW2d, at 758.

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[1] The court affirmed petitioner's convictions for numerous other offenses, including attempted first-degree murder, burglary, kidnaping, and attempted capital murder, for which he was sentenced to life plus 130 years' imprisonment. These convictions are not at issue in the instant petition.

"The killings were obviously a form of criminal homicide of some degree, but they were not 'in the course of and in furtherance of' the [charged] burglary as required to be capital felony murder." Ibid. The court noted that, under these facts, the State should have prosecuted Parker for ordinary capital murder rather than felony capital murder. Id., at 425-426, 731 SW2d, at 758.

Taking this last observation as an invitation to retry Parker, the State subsequently prosecuted Parker for "caus[ing] the death of two . . . or more persons in the course of the same criminal episode." Ark Code Ann § 5-10-101(a)(3) (1987). On appeal, the Arkansas Supreme Court rejected petitioner's contention that his reprosecution was barred by the Double Jeopardy Clause and affirmed petitioner's conviction. See Parker v State, 300 Ark 360, 779 SW2d 156 (1989) (Parker II). Reviewing its disposition in Parker I, the court concluded that it had reversed petitioner's original conviction not because the evidence was insufficient, but because the State had committed the "trial error" of "charging and trying [petitioner] under the wrong capital murder provision." Parker II, supra, at 363-364, 779 SW2d, at 157. Consequently, the court held, its decision in Parker I posed no double jeopardy bar to reprosecuting petitioner under the applicable provision of the Arkansas capital murder statute. Parker II, supra, at 363-364, 779 SW2d, at 157-158.[2]

II

Our precedents recognize that the Double Jeopardy Clause bars reprosecution following reversal for insufficiency of the evidence but not following reversal for trial error. Burks, supra, at 15-17, 57 L Ed 2d 1, 98 S Ct 2141; accord, Lockhart v Nelson, 488 US 33, 39, 102 L Ed 2d 265, 109 S Ct 285 (1988). The question posed by this petition is whether the original conviction of petitioner under the "wrong" capital murder statute was "trial error" in the sense in which our decisions have used that term.[3]

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[2] The petition for certiorari was not timely filed under this Court's Rule 13, which requires that a petition be filed within 90 days of the entry of judgment by a state court of last resort. However, the time requirements of our Rules are not jurisdictional in criminal cases and may be waived by the Court "in the exercise of its discretion when the ends of justice so require." Schacht v United States, 398 US 58, 64, 26 L Ed 2d 44, 90 S Ct 1555 (1970); see Sanabria v United States, 437 US 54, 62, n 12, 57 L Ed 2d 43, 98 S Ct 2170 (1978). In this case, petitioner's court-appointed counsel was relieved immediately following the affirmance of his second conviction, and there appears to be some question whether petitioner knowingly and competently waived his right to seek further review. In light of these circumstances, and in light of the manifest conflict between the decision of the Arkansas Supreme Court and this Court's precedents on the effect of reversal for insufficient evidence, I would waive the time requirements of Rule 13.

[3] The Arkansas Supreme Court in Parker II did not hold, and the respondent does not now argue, that petitioner's prosecution for "causing the death of two or more persons in a single criminal episode" was a *different offense* for double jeopardy purposes from the offense of capital felony murder for which petitioner was originally convicted. Such a contention would be hard to sustain, for the State clearly reproved the *conduct* for which petitioner was originally convicted—breaking into the Warrens' home and killing them—in order to establish essential elements of the offense of causing the death of two or more persons in a single criminal episode. See Grady v Corbin, 495 US 508, 109 L Ed 2d 548, 110 S Ct 2084 (1990). In other words, if Parker I did indeed reverse petitioner's felony-murder conviction for insufficient evidence, the State would not be free to prosecute petitioner for the same offense by merely charging him under a different statute, which is apparently what took place here.

We discussed the difference between insufficiency of the evidence and trial error in Burks v United States, supra. Reversal of a conviction is based on insufficiency of evidence, we explained, when the basis of the appellate court's disposition is the State's "failure of proof at trial." Id., at 16, 57 L Ed 2d 1, 98 S Ct 2141; accord, Hudson v Louisiana, 450 US 40, 43, 67 L Ed 2d 30, 101 S Ct 970 (1981). Reversal for trial error—"incorrect receipt or rejection of evidence, incorrect instructions, . . . prosecutorial misconduct" or the like—"does not constitute a decision . . . that the government has *failed to prove its case,"* but only "that a defendant has been convicted through a judicial *process* which is defective." Burks v United States, 437 US, at 15, 57 L Ed 2d 1, 98 S Ct 2141 (emphasis added).

Under these principles, there should be no serious question that petitioner's conviction in Parker I was reversed for insufficiency of the evidence, not trial error. Based on "the facts of th[e] case," and on the "state's proof," the Arkansas Supreme Court concluded that the murders with which petitioner had been charged "were not [committed] 'in the course of and in furtherance of' the [charged] burglary." 292 Ark, at 425, 731 SW2d, at 758. Even respondent thus concedes that petitioner's conviction was reversed because the State "failed to prove its case" with regard to an essential element of Arkansas' capital felony-murder statute. Brief in Opposition 3 ("According to the Court's opinion, the State adequately proved burglary and murder, *but failed to prove* that the murders were committed during the course of or in furtherance of the burglary" (emphasis added)).

In my view, the preclusive effect of this determination cannot be avoided by characterizing as "trial error" the State's decision to prosecute petitioner under the "wrong" capital murder statute. Such a ruling, under these circumstances, amounts to the proposition that it is trial error to prosecute a defendant under a statute for which the State does not have enough evidence to convict, a semantic sleight of hand that deprives the distinction between "trial error" and "evidentiary insufficiency" of any meaning. The unmistakable teaching of our double jeopardy jurisprudence is that the State may *not* avail itself of a second trial to remedy its mistake when it prosecutes a defendant for an offense that it is unable to prove. See, e.g., Burks v United States, supra, at 11, 57 L Ed 2d 1, 98 S Ct 2141 ("The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding").

The apparent source of the Arkansas Supreme Court's confusion on this issue was its misreading of this Court's decision in Montana v Hall, 481 US 400, 95 L Ed 2d 354, 107 S Ct 1825 (1987) (per curiam). In Hall, the defendant's original conviction for incest had been reversed on the ground that the state incest statute had not been in effect on the date of the charged criminal act. When the State subsequently charged the defendant under the state sexual assault statute, the State Supreme Court ruled that the reprosecution was barred under the Double Jeopardy Clause. This Court reversed. Characterizing the initial prosecution of the defendant under "the wrong statute" as "a defect in the charging instrument," the Court held that reversal on that basis did not bar reprosecution under the applicable sexual assault statute, id., at 404, 95 L Ed 2d 354, 107 S Ct 1825, which the State Supreme Court had determined to be comprised of the same elements as the state incest statute, id., at 402, 95 L Ed 2d 354, 107 S Ct 1825. Respondent argues that in this case, too, the decision to prosecute petitioner for felony murder "was[,] in effect, a deficiency in the charging instrument" that should not bar reprosecution under a different murder statute. Brief in Opposition 5.

In my view, the reasoning in Hall is wholly inapposite to this case. In Hall, the Court concluded that the State had prosecuted the defendant under the "wrong" statute not because the State *could not prove* that the defendant had violated the state incest statute, but because that statute was *legally inapplicable* to the defendant's conduct; indeed, this Court stressed that "[t]here [was] no suggestion" in the decision reversing the defendant's original conviction "that the evidence introduced at trial was insufficient to convict [for incest]." 481 US, at 403, 95 L Ed 2d 354, 107 S Ct 1825. In this case, the "inapplicability" of the capital felony-murder statute to petitioner's conduct was *factual,* not legal.

The suggestion in Hall that the defendant's conviction had been reversed because of a "a deficiency in the charging instrument" is also unavailing in this case. This was an appropriate characterization of the State's decision in Hall to charge the defendant under the incest statute instead of the (legally identical) sexual assault statute, because the inapplicability of the incest statute would have required the *dismissal* of the State's information had this challenge been properly raised by pretrial motion. In contrast, the grounds for reversal of petitioner's original conviction was the failure of the State's proof *at trial;* nothing in the Arkansas Supreme Court's opinion in Parker I indicates that the capital felony-murder count against petitioner was legally deficient *as charged.*

I would grant the petition in order to clarify the limited implications of Hall's suggestion that prosecution under the "wrong" statute can be trial error for purposes of the Double Jeopardy Clause. Consequently, I dissent.

III

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (Marshall, J., dissenting), I would also grant the petition for certiorari and vacate the death sentence in this case.

No. 89-7671. Michael Wayne Hunter, Petitioner v California

498 US 887, 112 L Ed 2d 190, 111 S Ct 222.

October 1, 1990. The petition for a writ of certiorari to the Supreme Court of California is denied.

Same case below, 49 Cal 3d 957, 264 Cal Rptr 367, 782 P2d 608.

Justice Marshall, dissenting.

This petition for certiorari presents the significant issue whether, and under what circumstances, a criminal defendant has a constitutional right to judicially immunized testimony useful to establishing his defense. I have previously expressed my view that this Court should resolve the conflict of lower court authority on this question. See Autry v McKaskle, 465 US 1085, 1087-1088, and n 3, 79 L Ed 2d 906, 104 S Ct 1458 (1984) (opinion dissenting from denial of certiorari). This petition underscores the importance of settling that conflict because it frames the issue in the most compelling possible setting: the penalty phase of a capital proceeding.

Petitioner was convicted of murder and sentenced to death. At trial, petitioner requested the court to confer use immunity upon his girl friend, who declined on Fifth Amendment grounds to testify on petitioner's behalf. Petitioner proffered at both the guilt and the penalty phases that his girl friend's testimony would show that petitioner was mentally distressed at the time of the charged murder. The trial court refused to grant immunity, and the California Supreme Court affirmed its ruling.

The manner in which the California Supreme Court disposed of petitioner's claim highlights the confusion engendered by this Court's failure to resolve definitively the judicial immunity issue. Noting the conflict among the lower courts, the California Supreme Court sought to avoid the question of a criminal defendant's constitutional right to judicially immunized testimony by ruling that petitioner had failed to meet the threshold showing established by Government of Virgin Islands v Smith, 615 F2d 964, 972 (CA3 1980), the first decision to recognize such a right. "[T]he proffered testimony," the court explained,

> "did not meet Smith's requirement that the evidence be 'clearly exculpatory and essential.' At best, the evidence was cumulative of the extensive testimony of other defense witnesses." 49 Cal 3d 957, 974, 782 P2d 608, 617 (1989).

The court dismissed in similar terms petitioner's claim that he was entitled to have his girl friend's immunized testimony as mitigating evidence during the penalty phase of the capital trial:

> "Even assuming, without purporting to decide, that the trial court had the authority to confer use immunity on the proposed witness, we cannot conclude on this record that the court erred. There is nothing in the record to demonstrate [petitioner] was denied *highly relevant* mitigating evidence, or to reveal the nature of that evidence. Even assuming that the evidence would have generally related to [petitioner's] state of mind on the morning of the murder, we cannot find that the absence of [the girl friend's] testimony prejudiced [petitioner]. The jury had already been presented evidence of [petitioner's] purported

depression at the guilt phase through the testimony of two psychiatrists." Id., at 980-981, 782 P2d, at 621 (emphasis added).

In my view, the question whether petitioner had a right to judicially immunized testimony at the penalty phase of the proceedings cannot be avoided on these terms. The California Supreme Court was mistaken in presuming that it could resolve the disposition of petitioner's claim to judicially immunized testimony at the penalty phase of a capital proceeding by the same standard used to assess a defendant's right to immunized testimony at trial. It is well established that a criminal defendant's entitlement to present useful evidence is at its strongest in the capital sentencing context; this Court has repeatedly emphasized that the State may not exclude "*any* relevant mitigating evidence offered by the defendant as the basis for a sentence less than death." Penry v Lynaugh, 492 US 302, 318, 106 L Ed 2d 256, 109 S Ct 2934 (1989) (emphasis added); accord, Skipper v South Carolina, 476 US 1, 4, 90 L Ed 2d 1, 106 S Ct 1669 (1986); Eddings v Oklahoma, 455 US 104, 114-115, 71 L Ed 2d 1, 102 S Ct 869 (1982). Assuming that a criminal defendant *does have* the due process right to judicially immunized testimony recognized by the Third Circuit in Smith, the assessment whether a capital defendant has satisfied the threshold showing of need must take account of that defendant's heightened entitlement to present *all* mitigating evidence to the sentencer. Cf. Green v Georgia, 442 US 95, 97, 60 L Ed 2d 738, 99 S Ct 2150 (1979) (holding that exclusion of mitigating evidence at penalty phase of capital proceeding through operation of generally applicable state hearsay rule denied defendant "a fair trial on the issue of punishment" and thus violated due process). A court could not, in my view, deny the defendant's request, as the California Supreme Court did, simply because the mitigating testimony sought by the defendant was not "*highly* relevant" or because *overlapping* evidence "had already been presented" to the sentencer. In sum, *if* a defendant has a right to judicially immunized testimony, petitioner's death sentence cannot stand.

I would grant the petition so that this Court can determine whether a criminal defendant has a due process right to judicially immunized testimony, and, if so, what standards govern immunized-testimony requests in capital sentencing proceedings. Consequently, I dissent from the denial of certiorari.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (Marshall, J., dissenting), I would also grant the petition and vacate the death penalty in this case even if I did not regard the petition as presenting a question independently meriting this Court's review.

No. 89-7777. Chris Lonchar Kellogg, as Next Friend to Larry Grant Lonchar, Petitioner v Walter Zant, Warden

498 US 890, 112 L Ed 2d 191, 111 S Ct 131, reh den 498 US 1008, 112 L Ed 2d 579, 111 S Ct 573.

October 1, 1990. The motion of

petitioner to consolidate this case with No. 89-7838, Hamilton v Texas, is denied. Petition for writ of certiorari to the Superior Court of Georgia, Butts County, denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-45. Hoffmann-La Roche Inc., Petitioner v United States District Court for the Northern District of Alabama

498 US 890, 112 L Ed 2d 192, 111 S Ct 232.

October 1, 1990. The motion of American Medical Association for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-47. Bruce L. White, Jr., Petitioner v Anthony M. Frank, Postmaster General

498 US 890, 112 L Ed 2d 192, 111 S Ct 232.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White and Justice Blackmun would grant certiorari.

Same case below, 895 F2d 243.

No. 90-51. Aetna Life Insurance Company, et al., Petitioners v Kenneth Kane, Individually and as Guardian, Next Friend, and on Behalf of Jonathan Andrew Kane, a Minor

498 US 890, 112 L Ed 2d 192, 111 S Ct 232.

October 1, 1990. The motion of respondent to strike supplemental brief to petition is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1283.

No. 90-98. George Franklin, et al., Petitioners v Peat Marwick Main & Co., et al.

498 US 890, 112 L Ed 2d 192, 111 S Ct 232.

October 1, 1990. The motion of National Association of Securities and Commercial Law Attorneys for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 884 F2d 1222.

No. 90-107. Courier-Journal and Louisville Times Company, et al., Petitioners v F.T.P., et al.

498 US 890, 112 L Ed 2d 193, 111 S Ct 232.

October 1, 1990. The motion of respondent F.T.P. for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Court of Appeals of Kentucky denied.

No. 90-166. Elizabeth Wright, Commissioner of Insurance of Kentucky, as Liquidator of Delta America Re Insurance Company, Petitioner v Arion Insurance Company, Limited, et al.

498 US 890, 112 L Ed 2d 193, 111 S Ct 233.

October 1, 1990. The motion of National Association of Insurance Commissioners for leave to file a brief as amicus curiae is granted. The motion of Roxani Gillespie, Insurance Commissioner of California, for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 890.

No. 90-198. Anne Anderson, et al., Petitioners v Beatrice Foods Co.

498 US 891, 112 L Ed 2d 193, 111 S Ct 233.

October 1, 1990. The motion of Harvard Law School Environmental Law Society, et al. for leave to file a brief as amici curiae is granted. The motion of American College of Real Estate Lawyers for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 900 F2d 388.

No. 90-5050. Joseph E. Covillion, Petitioner v Aetna Life & Casualty, et al.

498 US 891, 112 L Ed 2d 193, 111 S Ct 233.

October 1, 1990. The petition for a writ of certiorari to the United States Court of Appeals for the First Circuit before judgment is denied.

No. 90-5195. Richard T. Boggs, Petitioner v Raymond Muncy, Warden

498 US 891, 112 L Ed 2d 193, 111 S Ct 233.

October 1, 1990. The Court having voted to deny the petition for a writ of certiorari at the time of the denial of the application for a stay of execution, the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5374. Michael Sindram, Petitioner v Nissan Motor Corporation, et al.

498 US 891, 112 L Ed 2d 194, 111 S Ct 234, reh den 498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

October 1, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. The Chief Justice took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1531.

No. 89-7518. In Re William Flowers, Petitioner

498 US 805, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 89-7752. In Re Otis Wilkerson, Petitioner

498 US 805, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 89-7754. In Re Paul Cofield, Petitioner

498 US 805, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5044. In Re Robert Lee Gill, Jr., Petitioner

498 US 806, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5078. In Re Joseph Silverburg, Petitioner

498 US 806, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5104. In Re Michael C. Antonelli, Petitioner

498 US 806, 112 L Ed 2d 194, 111 S Ct 234.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5132. In Re Brian A. Brown, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5218. In Re Vernell McKnight, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235, reh den 498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5333. In Re Roger Harrison, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of habeas corpus is denied.

No. 90-5369 (A-88). In Re Eileen Vey, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The application for bail, addressed to Justice O'Connor and referred to the Court, is denied. The petition for a writ of habeas corpus is denied.

No. 89-7455. In Re Paul E. Archie, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7621. In Re Juan Puga Cedillo, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7639. In Re G. W. Hayden, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7682. In Re Curtis Taylor, Petitioner

498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7740. In Re Arthur W. Carson, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7755. In Re Theodore G. Cook, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7785. In Re Brenda Collier, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-7880. In Re Robert Kaltenbach, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-155. In Re Richard Millan, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-184. In re Harold G. Royce, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236, reh den 498 US 1009, 112 L Ed 2d 580, 111 S Ct 573.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-5108. In Re Juan Puga Cedillo, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236, reh den 498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-5317. In Re Talmon Hegwood, Jr., Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-5325. In Re Kenneth Gray, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 90-5372. In Re Debro Siddiq Abdul-Akbar, Petitioner

498 US 806, 112 L Ed 2d 196, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus is denied.

No. 89-1849. Gerald E. Mansell, Petitioner v Gaye M. Mansell

498 US 806, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus or certiorari to the Court of Appeal of California, Fifth Appellate District, is denied.

Same case below, 217 Cal App 3d 219, 265 Cal Rptr 227.

No. 89-7667. In Re Ruchell Cinque Magee, Petitioner

498 US 806, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus and/or prohibition is denied.

No. 89-7768. In Re Clinton Eldridge, Petitioner

498 US 806, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus and/or prohibition is denied.

No. 89-7773. In Re Robert Allen Jordan, Petitioner

498 US 806, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for a writ of mandamus and/or prohibition is denied.

No. 88-6294. William Oliver, et ux., Petitioners v Merchants and Farmers Bank, Macon, Mississippi

498 US 891, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 490 US 1023, 104 L Ed 2d 188, 109 S Ct 1751.

No. 89-1733. Gene A. Foreman, Petitioner v Aetna Casualty & Surety Company

498 US 891, 112 L Ed 2d 197, 111 S Ct 237.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 497 US 1025, 111 L Ed 2d 783, 110 S Ct 3273.

No. 89-1768. John S. Shipley, et ux., Petitioners v First Federal Savings and Loan Association of Delaware, et al.

498 US 891, 112 L Ed 2d 197, 111 S Ct 238.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 496 US 938, 110 L Ed 2d 666, 110 S Ct 3218.

No. 89-1812. Jamie H. Espinueva, Petitioner v H. Lawrence Garrett, III, Secretary of the Navy

498 US 891, 112 L Ed 2d 198, 111 S Ct 238.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 497 US 1005, 111 L Ed 2d 751, 110 S Ct 3241.

No. 89-6228. Alvin Elzy, Petitioner v Larry Smith, Warden, et al.

498 US 891, 112 L Ed 2d 198, 111 S Ct 238.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 493 US 1049, 107 L Ed 2d 846, 110 S Ct 852.

No. 89-7445. Quintin Littlejohn, Petitioner v South Carolina

498 US 891, 112 L Ed 2d 198, 111 S Ct 238.

October 1, 1990. The petition for rehearing is denied.

Former Decision, 497 US 1028, 111 L Ed 2d 789, 110 S Ct 3280.

No. 89-700. Astroline Communications Company Limited Partnership, Petitioner v Shurberg Broadcasting of Hartford, Inc., et al.

498 US 892, 112 L Ed 2d 198, 111 S Ct 238.

October 1, 1990. The motion of respondent Shurberg Broadcasting of Hartford, Inc., to waive this Court's Rule 44.1 is denied. The petition for rehearing is denied.

Former Decision, 497 US 547, 111 L Ed 2d 445, 110 S Ct 2997.

No. 89-1623. Charles F. Gardner, Petitioner v Newsday, Inc.

498 US 892, 112 L Ed 2d 198, 111 S Ct 238.

October 1, 1990. The petition for rehearing is denied. Justice O'Connor took no part in the consideration or decision of this petition.

Former Decision, 496 US 931, 110 L Ed 2d 651, 110 S Ct 2631.

No. 89-1983. Petaluma Valley Hospital, et al., Petitioners v Marguerite Taylor

498 US 892, 112 L Ed 2d 198, 111 S Ct 239.

October 2, 1990. The petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 898 F2d 156.

No. 89-7724. Raymond Perez-Castillo, Petitioner v United States

498 US 892, 112 L Ed 2d 198, 111 S Ct 239.

October 9, 1990. The petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 892 F2d 84.

No. 89-1952. Arthur Jones, Petitioner v American Broadcasting Companies, Inc.

498 US 892, 112 L Ed 2d 199, 111 S Ct 239.

October 9, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Milkovich v Lorain Journal Company, 497 US 1, 111 L Ed 2d 1, 110 S Ct 2695 (1990). Justice Souter took no part in the consideration or decision of this case.

Same case below, 893 F2d 1342.

No. ——. Frank Foe and Walter Woe, Petitioners v Mario Cuomo, Governor of New York, et al.

498 US 892, 112 L Ed 2d 199, 111 S Ct 239.

October 9, 1990. The motion of petitioner Wilma Woe for permission to use a pseudonym and to seal name is granted. The motion of Wilma Woe for leave to proceed in forma pauperis is granted. The motion of counsel to allow petitioner R. L. by T. C. L. leave to proceed in forma pauperis without an affidavit of indigency executed by petitioner is denied without prejudice to petitioner executing an affidavit in support of a motion for leave to proceed in forma pauperis. Justice Souter took no part in the consideration or decision of these motions.

No. ——. George Ampatiellos, Petitioner v City of New York, et al.

498 US 893, 112 L Ed 2d 199, 111 S Ct 240.

October 9, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied. Justice Souter took no part in the consideration or decision of this motion.

No. ——. Anthony J. Bator, Jr., Petitioner v United States

498 US 893, 112 L Ed 2d 199, 111 S Ct 240.

October 9, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied. Justice Souter took no part in the consideration or decision of this motion.

No. D-920. In the Matter of Disbarment of James Colvin Dodge

498 US 893, 112 L Ed 2d 199, 111 S Ct 240.

October 9, 1990. Disbarment order entered. Justice Souter took no part in the consideration or decision of this order.

No. 111, Original. State of Delaware, Plaintiff v State of New York

498 US 893, 112 L Ed 2d 200, 111 S Ct 240.

October 9, 1990. The First Interim Report and Fee Application is approved, and payment shall be made to "Thomas H. Jackson, Special Master" by the party jurisdictions in the total amount of $23,629.10. It is further ordered that the parties shall bear these costs equally, with each jurisdiction which is a party or which has a pending application to intervene at the date of this order contributing an equal share. It is further ordered that each party jurisdiction may make payment either to the firm of Dickstein, Shapiro & Morin, as coordinating counsel for this purpose, or may make payment directly or via separate counsel to the Special Master. It is further ordered that each party jurisdiction's payment of fees, costs, and expenses pursuant to this order shall be due within forty-five (45) days from the date hereof. Justice Souter took no part in the consideration or decision of this order.

No. 112, Original. State of Wyoming, Plaintiff v State of Oklahoma

498 US 893, 112 L Ed 2d 200, 111 S Ct 240.

October 9, 1990. The motion of the Special Master for allowance of fees and expenses is granted, and the Special Master is awarded $43,275.79 to be paid equally by the parties. Justice Souter took no part in the consideration or decision of this motion.

No. 89-1541. Elizabeth Dole, Secretary of Labor, Petitioner v Occupational Safety and Health Review Commission, et al.

498 US 893, 112 L Ed 2d 200, 111 S Ct 241.

October 9, 1990. The motion of Occupational Safety and Health Review Commission for leave to file a brief as amicus curiae is granted. Justice Souter took no part in the consideration or decision of this motion.

No. 89-1679. Summit Health, Ltd., et al., Petitioners v Simon J. Pinhas

498 US 893, 112 L Ed 2d 200, 111 S Ct 241.

October 9, 1990. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted. Justice Souter took no part in the consideration or decision of this motion.

No. 89-1715. Cathy Burns, Petitioner v Rick Reed

498 US 893, 112 L Ed 2d 201, 111 S Ct 241.

October 9, 1990. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted. Justice Souter took no part in the consideration or decision of this motion.

No. 89-1784. Insurance Company of the State of Pennsylvania, et al., Petitioners v Ben Cooper, Inc.

498 US 894, 112 L Ed 2d 201, 111 S Ct 241.

October 9, 1990. The motion of United Missouri Bank of Kansas City, N.A., for leave to file a brief as amicus curiae is granted. The motion of United States for leave to intervene is granted. Justice Souter took no part in the consideration or decision of these motions.

No. 89-1717. Florida, Petitioner v Terrance Bostick

498 US 894, 112 L Ed 2d 201, 111 S Ct 241.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Florida granted. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 554 So 2d 1153.

No. 90-97. American Hospital Association, Petitioner v National Labor Relations Board, et al.

498 US 894, 112 L Ed 2d 201, 111 S Ct 242.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 899 F2d 651.

No. 90-333. Lampf, Pleva, Lipkind, Prupis & Petigrow, Petitioner v John Gilbertson, et al.

498 US 894, 112 L Ed 2d 201, 111 S Ct 242.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 895 F2d 1416; 895 F2d 1417; 895 F2d 1418.

No. 89-7645. Dionisio Hernandez, Petitioner v New York

498 US 894, 112 L Ed 2d 201, 111 S Ct 242.

October 9, 1990. The motion of petitioner for leave to proceed in forma pauperis is granted and the petition for writ of certiorari to the Court of Appeals of New York is granted limited to the following questions:

"1. Whether a prosecutor's proffered explanation that prospective Latino jurors were struck from the venire because he suspected they might not abide by official translations of Spanish language testimony constitutes an acceptable 'race neutral' explanation under Batson v Kentucky, 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712 (1986)?

"2. Where a trial court has accepted the prosecutor's proffered explanation as being race neutral, what standard of review is to be applied by reviewing courts?"

Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 75 NY2d 350, 553 NYS2d 85, 552 NE2d 621.

No. 90-5193. Dawud Majid Mu-'Min, Petitioner v Virginia

498 US 894, 112 L Ed 2d 202, 111 S Ct 242.

October 9, 1990. The motion of petitioner for leave to proceed in forma pauperis is granted and the petition for writ of certiorari to the Supreme Court of Virginia is granted limited to Questions 1 and 2 presented by the petition. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 239 Va 433, 389 SE2d 886.

No. 90-5551. Edward Harold Schad, Jr., Petitioner v Arizona

498 US 894, 112 L Ed 2d 202, 111 S Ct 243.

October 9, 1990. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari to the Supreme Court of Arizona are granted. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 163 Ariz 411, 788 P2d 1162.

No. 89-1873. Maryland Higher Education Loan Corporation, Petitioner v Lauro F. Cavazos, Secretary of Education, et al.

No. 89-2027. South Carolina State Education Assistance Authority, Petitioner v Lauro F. Cavazos, Secretary of Education, et al.

No. 90-4. North Carolina, et al., Petitioners v United States, et al.

498 US 895, 112 L Ed 2d 202, 111 S Ct 243.

October 9, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of these petitions.

Same cases below, 897 F2d 1272.

No. 89-1893. Bell & Murphy and Associates, Inc., et al., Petitioners v Federal Deposit Insurance Corporation, as Receiver for First RepublicBank Dallas, N.A., et al.

498 US 895, 112 L Ed 2d 203, 111 S Ct 244.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 894 F2d 750.

No. 89-1925. Air Line Pilots Association, International, AFL-CIO, et al., Petitioners v Frank Landry, et al.

No. 90-189. Frank Landry, et al., Petitioners v Air Line Pilots Association, International, AFL-CIO, et al.

498 US 895, 112 L Ed 2d 203, 111 S Ct 244.

October 9, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of these petitions.

Same cases below, 901 F2d 404.

No. 89-1931. Robert T. Howitt, Petitioner v United States Department of Commerce

498 US 895, 112 L Ed 2d 203, 111 S Ct 244.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 583.

No. 89-7842. Alexzene Hamilton, as Natural Mother and Next Friend to James Edward Smith, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 895, 112 L Ed 2d 203, 111 S Ct 244.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 825.

No. 90-13. Ohio Student Loan Commission, Petitioner v Lauro F. Cavazos, Secretary of Education, et al.

498 US 895, 112 L Ed 2d 203, 111 S Ct 245.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 894.

No. 90-54. Richard M. Dray, Petitioner v United States

498 US 895, 112 L Ed 2d 204, 111 S Ct 245.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 901 F2d 1132.

No. 90-56. Margarita Rosa De Cuellar, Petitioner v Nicholas F. Brady, Secretary of the Treasury, et al.

498 US 895, 112 L Ed 2d 204, 111 S Ct 245.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 881 F2d 1561.

No. 90-70. May Department Stores Company, Petitioner v National Labor Relations Board, et al.

498 US 895, 112 L Ed 2d 204, 111 S Ct 245.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 221.

No. 90-71. P. A. Hackler, et al., Petitioners v R. Dobie Langenkamp

498 US 896, 112 L Ed 2d 204, 111 S Ct 245.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 1041.

No. 90-76. Stephen Juzwin, et ux., Petitioners v Asbestos Corporation Ltd., Successor to Johnson's Co., et al.

498 US 896, 112 L Ed 2d 204, 111 S Ct 246.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 686.

No. 90-80. Richard M. Penta, Petitioner v United States

498 US 896, 112 L Ed 2d 205, 111 S Ct 246.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 815.

No. 90-84. Education Assistance Corporation, Petitioner v Lauro F. Cavazos, Secretary of Education

498 US 896, 112 L Ed 2d 205, 111 S Ct 246.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 617.

No. 90-99. Nelson A. Italiano, Petitioner v United States

498 US 896, 112 L Ed 2d 205, 111 S Ct 246.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 894 F2d 1280.

No. 90-119. Citizens for Fair Utility Regulation, Petitioner v Nuclear Regulatory Commission, et al.

498 US 896, 112 L Ed 2d 205, 111 S Ct 246.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 51.

No. 90-190. Michael J. Dodson, Petitioner v Superior Court of Connecticut, Hartford-New Britain Judicial District

498 US 896, 112 L Ed 2d 205, 111 S Ct 247.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 214 Conn 344, 572 A2d 328.

No. 90-200. Missouri Pacific Railroad Company, dba Union Pacific Railroad Company, Petitioner v H. W. Mitchell

498 US 896, 112 L Ed 2d 205, 111 S Ct 247.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 786 SW2d 659.

No. 90-203. Bartholomew S. Berry, Petitioner v United States

498 US 896, 112 L Ed 2d 206, 111 S Ct 247.

October 9, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 30 MJ 134.

No. 90-220. Rudolph De Souza, Petitioner v Wanda L. Schultz

498 US 896, 112 L Ed 2d 206, 111 S Ct 247, reh den 498 US 1008, 112 L Ed 2d 579, 111 S Ct 573.

October 9, 1990. Petition for writ of certiorari to the Circuit Court of Virginia, Arlington County, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-223. Jimmie D. Oyler, Petitioner v Earle D. Jones, District Judge, District Court of Johnson County, Kansas

498 US 896, 112 L Ed 2d 206, 111 S Ct 247.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Kansas denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-239. United Transportation Union, Petitioner v United Transportation Union, Local 74

498 US 896, 112 L Ed 2d 206, 111 S Ct 248.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 36.

No. 90-245. Rex A. Sharp, et al., Petitioners v Kansas

498 US 896, 112 L Ed 2d 206, 111 S Ct 248.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-248. San Francisco Fire Fighters Local 798, International Association of Fire Fighters, AFL-CIO, Petitioner v City and County of San Francisco, et al.

498 US 897, 112 L Ed 2d 206, 111 S Ct 248.

October 9, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 890 F2d 1438.

No. 90-254. Alabama Department of Revenue, Petitioner v Pilot Petroleum Corporation, et al.

498 US 897, 112 L Ed 2d 207, 111 S Ct 248.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 816.

No. 90-258. Weslo, Inc., Petitioner v Diversified Products Corp., et al.

498 US 897, 112 L Ed 2d 207, 111 S Ct 248.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 44.

No. 90-262. Sheila Sims, Petitioner v John Mulcahy

498 US 897, 112 L Ed 2d 207, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 524.

No. 90-266. Hughes Brailey, Petitioner v Jenny Alderman

498 US 897, 112 L Ed 2d 207, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 38.

No. 90-268. Jacqueline Shedbalkar, Petitioner v A. Rashied Shedbalkar

498 US 897, 112 L Ed 2d 207, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-269. Karen R. Lunde, Petitioner v Charles M. Helms, et al.

498 US 897, 112 L Ed 2d 208, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 1343.

No. 90-274. Teamsters Local Union No. 776, Petitioner v Rite Aid Corporation

498 US 897, 112 L Ed 2d 208, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1562.

No. 90-275. Mary Franco, Petitioner v American Gas Association Laboratories, et al.

498 US 897, 112 L Ed 2d 208, 111 S Ct 249.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 39.

No. 90-276. Elisa Cosgrove, Petitioner v Kansas State Department of Social and Rehabilitation Services

498 US 897, 112 L Ed 2d 208, 111 S Ct 250.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Kansas denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 14 Kan App 2d 217, 786 P2d 636.

No. 90-277. Curtis L. Wrenn, Petitioner v G. Bruce McFadden, Individually and as Director, University of Maryland Hospital, et al.

498 US 897, 112 L Ed 2d 208, 111 S Ct 250.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1533.

No. 90-278. Marilyn A. Strong, Petitioner v Board of Education of Uniondale Union Free School District, et al.

498 US 897, 112 L Ed 2d 208, 111 S Ct 250.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 208.

No. 90-279. Horace D. McCowan, Jr., et ux., Petitioners v Sears, Roebuck and Co., et al.

498 US 897, 112 L Ed 2d 209, 111 S Ct 250.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 908 F2d 1099.

No. 90-280. Joan A. Kinney, Petitioner v Connecticut

498 US 898, 112 L Ed 2d 209, 111 S Ct 251.

October 9, 1990. Petition for writ of certiorari to the Appellate Court of Connecticut denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-282. Frank Pavao, Petitioner v New Jersey

498 US 898, 112 L Ed 2d 209, 111 S Ct 251.

October 9, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 239 NJ Super 206, 570 A2d 1285.

No. 90-284. Boatmen's National Bank of St. Louis, as Successor in Interest to Centerre Bank, N.A., fka First National Bank of St. Louis, Petitioner v Garland Carver, Trustee

498 US 898, 112 L Ed 2d 209, 111 S Ct 251.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Iowa denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 455 NW2d 680.

No. 90-287. J. Reed Dunkley, et ux., Petitioners v Rega Properties, Ltd., et al.

498 US 898, 112 L Ed 2d 209, 111 S Ct 251.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 894 F2d 1136.

No. 90-288. New York State Teamsters Joint Council 18, et al., Petitioners v New York State Teamsters Council Health and Hospital Fund, et al.

498 US 898, 112 L Ed 2d 210, 111 S Ct 251.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 919.

No. 90-290. Billy Ray Eubanks, Petitioner v Getty Oil Company, et al.

498 US 898, 112 L Ed 2d 210, 111 S Ct 252.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 896 F2d 960.

No. 90-292. Leo M. Mullen, Petitioner v City of Belton, Missouri, et al.

498 US 898, 112 L Ed 2d 210, 111 S Ct 252.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Missouri, Western District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-294. Bill Sandlin, Petitioner v Texaco Refining and Marketing, Inc.

498 US 898, 112 L Ed 2d 210, 111 S Ct 252.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 1479.

No. 90-296. Love Church, Petitioner v City of Evanston, Illinois

498 US 898, 112 L Ed 2d 210, 111 S Ct 252.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 896 F2d 1082.

No. 90-297. Porter H. Mitchell, Petitioner v Mobil Oil Corporation, et al.

498 US 898, 112 L Ed 2d 210, 111 S Ct 252.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 896 F2d 463.

No. 90-299. Waste Conversion, Inc., Petitioner v Pennsylvania

498 US 898, 112 L Ed 2d 211, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 130 Pa Cmwlth 443, 568 A2d 738.

No. 90-301. Richard Coffee, Petitioner v Seaboard System Railroad, Inc.

498 US 898, 112 L Ed 2d 211, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 565 So 2d 35.

No. 90-302. Clarence E. Peten, Petitioner v United States

498 US 898, 112 L Ed 2d 211, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 31 MJ 409.

No. 90-303. Le Bup Thi Dao, et al., Petitioners v Board of Medical Quality Assurance of California, et al.

498 US 899, 112 L Ed 2d 211, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-304. Centennial School District, et al., Petitioners v Harry Gregoire, et al.

498 US 899, 112 L Ed 2d 211, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 1366.

No. 90-305. Lawrence S. Krain, Petitioner v California

498 US 899, 112 L Ed 2d 212, 111 S Ct 253.

October 9, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-311. Bateman Eichler, Hill Richards, Incorporated, et al., Petitioners v John D. Ruocco

498 US 899, 112 L Ed 2d 212, 111 S Ct 254.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 1232.

No. 90-313. Earlene Polyak, Petitioner v Frank Hulen, et al.; and Earlene Polyak, Petitioner v William Boston, et al.

498 US 899, 112 L Ed 2d 212, 111 S Ct 254, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same cases below, 898 F2d 154 (first case) and 905 F2d 1538 (second case).

No. 90-314. Suzanne Brunazzi Grant, Petitioner v Federal Land Bank of Jackson, Louisiana, et al.

498 US 899, 112 L Ed 2d 212, 111 S Ct 254.

October 9, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, Second Circuit, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 559 So 2d 148.

No. 90-316. Danny M. Linkous, Petitioner v Peter Johnson, Trustee

498 US 899, 112 L Ed 2d 212, 111 S Ct 254.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-317. Phyllis Pruitt, Petitioner v PPG Industries, Inc.

498 US 899, 112 L Ed 2d 212, 111 S Ct 254.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 895 F2d 734.

No. 90-318. Carl W. Tinnon, et al., Petitioners v Burlington Northern Railroad Company

498 US 899, 112 L Ed 2d 213, 111 S Ct 255.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 1340.

No. 90-319. Phyllis Zagano, Petitioner v Fordham University, et al.

498 US 899, 112 L Ed 2d 213, 111 S Ct 255.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 12.

No. 90-320. Allan R. Pervis, Petitioner v State Farm Fire and Casualty Company

498 US 899, 112 L Ed 2d 213, 111 S Ct 255.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 901 F2d 944.

No. 90-322. Dora Vallance, Petitioner v James Lionel Brewbaker

498 US 899, 112 L Ed 2d 213, 111 S Ct 255.

October 9, 1990. Petition for writ of certiorari to the Circuit Court of Michigan, County of Cheboygan, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-325. Freeport Transport, Inc., Petitioner v International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.

498 US 899, 112 L Ed 2d 213, 111 S Ct 255.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 523 Pa 491, 568 A2d 151, 85 ALR4th 963.

No. 90-330. William M. Wilcox, Jr., Petitioner v Terrytown Fifth District Volunteer Fire Department, Inc.

498 US 900, 112 L Ed 2d 214, 111 S Ct 256.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 765.

No. 90-331. Corinth Pipeworks S.A., Petitioner v Gulf Consolidated Services, Inc.

498 US 900, 112 L Ed 2d 214, 111 S Ct 256.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 1071.

No. 90-359. Howard A. Anthony, Petitioner v City of Chicago

498 US 900, 112 L Ed 2d 214, 111 S Ct 256.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 136 Ill 2d 169, 144 Ill Dec 93, 554 NE2d 1381.

No. 90-362. Avis J. Smith, Petitioner v United States Air Force

498 US 900, 112 L Ed 2d 214, 111 S Ct 256, reh den 498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 896 F2d 544.

No. 90-371. Lois Morales, Petitioner v Kansas State University, et al.

498 US 900, 112 L Ed 2d 214, 111 S Ct 256.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-378. Mary C. Jackson, Petitioner v United States

498 US 900, 112 L Ed 2d 214, 111 S Ct 257.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 896 F2d 1370.

No. 90-386. Ronald F. Keith, Petitioner v Donald B. Rice, Secretary of the Air Force

498 US 900, 112 L Ed 2d 215, 111 S Ct 257.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 736.

No. 90-390. Frank E. Butler, III, Petitioner v United States

498 US 900, 112 L Ed 2d 215, 111 S Ct 257.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1532.

No. 90-397. Gary Green, Petitioner v Maurice P. Foley

498 US 900, 112 L Ed 2d 215, 111 S Ct 257.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 1137.

No. 90-398. Carl Ray Helms, Dennis Harris, and Shirley Harris, Petitioners v United States

498 US 900, 112 L Ed 2d 215, 111 S Ct 257.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 1293.

No. 90-406. Curtis L. Wrenn, Petitioner v Richard Droske, et al.

498 US 900, 112 L Ed 2d 215, 111 S Ct 258.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 909 F2d 1472.

No. 90-412. David Wells Edgar, Petitioner v United States

498 US 900, 112 L Ed 2d 215, 111 S Ct 258.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-415. St. Charles Associates, Petitioner v Manuel Lujan, Jr., Secretary of the Interior

498 US 900, 112 L Ed 2d 216, 111 S Ct 258.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 1139.

No. 90-418. Esther Gollner, Petitioner v Office of Personnel Management

498 US 900, 112 L Ed 2d 216, 111 S Ct 258.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 45.

No. 90-5134. Francis Phillip Conway, Petitioner v United States

498 US 901, 112 L Ed 2d 216, 111 S Ct 258.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 909 F2d 1473.

No. 90-5153. Carlos De La Torre, Petitioner v United States

498 US 901, 112 L Ed 2d 216, 111 S Ct 259.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 264.

No. 90-5162. Joseph Thomas Manley, Petitioner v United States

498 US 901, 112 L Ed 2d 216, 111 S Ct 259.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 893 F2d 1221.

No. 90-5163. Eugene Jenkins, Petitioner v United States

498 US 901, 112 L Ed 2d 216, 111 S Ct 259.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 901 F2d 1075.

No. 90-5207. Steven Schwartz, Petitioner v United States

498 US 901, 112 L Ed 2d 217, 111 S Ct 259.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 899 F2d 243.

No. 90-5209. Jeffrey Stewart, Petitioner v Kentucky

498 US 901, 112 L Ed 2d 217, 111 S Ct 259.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Kentucky denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5362. Joanne Rodriguez-Doshi, Petitioner v General Services Administration, et al.

498 US 901, 112 L Ed 2d 217, 111 S Ct 260, reh den 498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 37.

No. 90-5376. James Flanders, Petitioner v Connecticut

498 US 901, 112 L Ed 2d 217, 111 S Ct 260.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 214 Conn 493, 572 A2d 983.

No. 90-5381. William Watts, Petitioner v William Armontrout, Warden

498 US 901, 112 L Ed 2d 217, 111 S Ct 260.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1571.

No. 90-5382. Steven Scott, Petitioner v John Icenogle, et al.

498 US 901, 112 L Ed 2d 217, 111 S Ct 260.

October 9, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5385. William Richardson, Petitioner v Mike Henry, et al.

498 US 901, 112 L Ed 2d 218, 111 S Ct 260.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 414.

No. 90-5386. Albert Thomas, Petitioner v David Evans, et al.

498 US 901, 112 L Ed 2d 218, 111 S Ct 261.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5390. Charles Tigner, Petitioner v Illinois

498 US 901, 112 L Ed 2d 218, 111 S Ct 261.

October 9, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 194 Ill App 3d 600, 141 Ill Dec 311, 551 NE2d 304.

No. 90-5400. Ernie Lee Hoch, Petitioner v Montana

498 US 901, 112 L Ed 2d 218, 111 S Ct 261.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 894 F2d 1344.

No. 90-5410. Michael Sindram, Petitioner v James Ryan, et al.

498 US 901, 112 L Ed 2d 218, 111 S Ct 261, reh den 498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1531.

No. 90-5411. William Powlowski, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 902, 112 L Ed 2d 219, 111 S Ct 261.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 713.

No. 90-5413. Daniel Olivarez, Jr., Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 902, 112 L Ed 2d 219, 111 S Ct 262.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 956.

No. 90-5417. Juan Figueroa Andino, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 902, 112 L Ed 2d 219, 111 S Ct 262.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5420. Lenny Dixon, Petitioner v Robert Fox, et al.

498 US 902, 112 L Ed 2d 219, 111 S Ct 262.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 893 F2d 1556.

No. 90-5430. Royal Edward Glaude, Petitioner v State Bar of California, et al.

498 US 902, 112 L Ed 2d 219, 111 S Ct 262.

October 9, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5431. Donnie Singleton, Petitioner v Mike Moore, Attorney General of Mississippi

498 US 902, 112 L Ed 2d 219, 111 S Ct 262.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5437. George Balmer and Margaret Balmer, Petitioners v State Farm Fire and Casualty Company

498 US 902, 112 L Ed 2d 220, 111 S Ct 263, reh den 498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 891 F2d 874.

No. 90-5438. Freddie Sparks, Petitioner v Mississippi

498 US 902, 112 L Ed 2d 220, 111 S Ct 263.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Mississippi denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5441. Susan G. Madden, Petitioner v NBD Mortgage Company, et al.

498 US 902, 112 L Ed 2d 220, 111 S Ct 263, reh den 498 US 995, 112 L Ed 2d 559, 111 S Ct 552.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 897 F2d 529.

No. 90-5447. Dalanti D. Hall, Petitioner v Arthur M. Ney, Jr.

498 US 902, 112 L Ed 2d 220, 111 S Ct 263.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1569.

No. 90-5448. Lloyd London, Petitioner v Edwina Arington, et al.

498 US 902, 112 L Ed 2d 220, 111 S Ct 263.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5449. Ahsan Mohiuddin, Petitioner v Alabama Department of Industrial Relations and USBI, Co.

498 US 902, 112 L Ed 2d 220, 111 S Ct 264, reh den 498 US 995, 112 L Ed 2d 559, 111 S Ct 552.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5450. Clyde Nubine, Petitioner v Paul A. Cooley, et al.

498 US 902, 112 L Ed 2d 221, 111 S Ct 264.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 911 F2d 727.

No. 90-5451. William Cooper, Petitioner v Jim Jones, et al.

498 US 902, 112 L Ed 2d 221, 111 S Ct 264.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Missouri, Western District, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 787 SW2d 307.

No. 90-5455. Thoni Lee Green, Petitioner v Larry Smith, Warden

498 US 902, 112 L Ed 2d 221, 111 S Ct 264.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 152.

No. 90-5456. Michael Sindram, Petitioner v Robert Sweeney, et al.

498 US 903, 112 L Ed 2d 221, 111 S Ct 264, reh den 498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1531.

No. 90-5462. David Turner, Petitioner v AT&T Communications

498 US 903, 112 L Ed 2d 221, 111 S Ct 265.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 914 F2d 244.

No. 90-5463. William Schrader, Petitioner v John P. Whitley, Warden, et al.

498 US 903, 112 L Ed 2d 221, 111 S Ct 265.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 282.

No. 90-5467. Roscoe W. Fields, Sr., Petitioner v Joe C. Fowler, et al.

498 US 903, 112 L Ed 2d 222, 111 S Ct 265.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 898 F2d 153.

No. 90-5469. Jerry C. Moore, Petitioner v Stewart Title of California and State Savings and Loan

498 US 903, 112 L Ed 2d 222, 111 S Ct 265, reh den 498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

October 9, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5475. Phillip Elliott Jones, Petitioner v City of Hamtramck, et al.

498 US 903, 112 L Ed 2d 222, 111 S Ct 265.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 908.

No. 90-5478. John Rhones, Petitioner v Robert Borg, Warden

498 US 903, 112 L Ed 2d 222, 111 S Ct 266.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 872 F2d 430.

No. 90-5481. William Christopher Brown, Petitioner v Terrie C. Chavis, Warden, et al.

498 US 903, 112 L Ed 2d 222, 111 S Ct 266.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1564.

No. 90-5484. Debro Siddiq Abdul-Akbar, Petitioner v Delaware

498 US 903, 112 L Ed 2d 222, 111 S Ct 266.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Delaware denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 582 A2d 934.

No. 90-5485. William Albert Allen, Petitioner v Montgomery County Jail, et al.

498 US 903, 112 L Ed 2d 223, 111 S Ct 266.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 895 F2d 1412.

No. 90-5487. Edward White, Petitioner v Wayne McGinnis

498 US 903, 112 L Ed 2d 223, 111 S Ct 266.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 699.

No. 90-5490. Elderege Boots Williams, Petitioner v Texas

498 US 903, 112 L Ed 2d 223, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Ninth District, denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5493. Gregory W. Boudette, Petitioner v Arizona

498 US 903, 112 L Ed 2d 223, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 164 Ariz 180, 791 P2d 1063.

No. 90-5494. Ezekiel Brown, Petitioner v Illinois

498 US 903, 112 L Ed 2d 223, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Second District, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 195 Ill App 3d 78, 141 Ill Dec 757, 551 NE2d 1100.

No. 90-5495. Kevin Cathers, Petitioner v Illinois

498 US 903, 112 L Ed 2d 223, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Fourth District, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 194 Ill App 3d 318, 550 NE2d 1018.

No. 90-5496. Arminta Russell, Petitioner v United States

498 US 904, 112 L Ed 2d 224, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1450.

No. 90-5497. John P. Royster, Petitioner v Thomas Kean, et al.

498 US 904, 112 L Ed 2d 224, 111 S Ct 267.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5503. Danny R. Hollingsworth, Petitioner v California

498 US 904, 112 L Ed 2d 224, 111 S Ct 268.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 39.

No. 90-5504. Alvin Mays, Petitioner v Henry N. Grayson, Warden

498 US 904, 112 L Ed 2d 224, 111 S Ct 268.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 33.

No. 90-5517. Richard Ford, Petitioner v Richard Dugger, Secretary, Florida Department of Corrections, et al.

498 US 904, 112 L Ed 2d 224, 111 S Ct 268.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5528. Steven H. Elliott, Petitioner v United States

498 US 904, 112 L Ed 2d 224, 111 S Ct 268.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 893 F2d 220 and 904 F2d 25.

No. 90-5532. Pamela Johnson, Petitioner v Farmers Insurance Group, et al.

498 US 904, 112 L Ed 2d 225, 111 S Ct 268.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 893 F2d 344.

No. 90-5534. Edward Colella, Petitioner v United States

498 US 904, 112 L Ed 2d 225, 111 S Ct 269.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 696.

No. 90-5539. Brother Norelin, Petitioner v United States

498 US 904, 112 L Ed 2d 225, 111 S Ct 269.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 828.

No. 90-5547. Ronald Beachum, Petitioner v Robert Tansy, Warden

498 US 904, 112 L Ed 2d 225, 111 S Ct 269.

October 9, 1990. Petition for writ of ceritorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 1321.

No. 90-5548. Pablo Soto, Petitioner v United States

498 US 904, 112 L Ed 2d 225, 111 S Ct 269.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 697.

No. 90-5557. Charles Michael Kissick, Petitioner v United States

498 US 904, 112 L Ed 2d 226, 111 S Ct 269.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5561. Skid Ronnie Manns, Petitioner v United States

498 US 904, 112 L Ed 2d 226, 111 S Ct 270.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1100.

No. 90-5564. Inez Martinez, Petitioner v United States

498 US 904, 112 L Ed 2d 226, 111 S Ct 270.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 714.

No. 90-5568. Mario Restrepo, Petitioner v United States

498 US 904, 112 L Ed 2d 226, 111 S Ct 270.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 704.

No. 90-5569. Jess W. Feathers, Petitioner v United States

498 US 905, 112 L Ed 2d 226, 111 S Ct 270.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 909 F2d 510.

No. 90-5570. Lillian Perez, Petitioner v United States

498 US 905, 112 L Ed 2d 226, 111 S Ct 270.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 142.

No. 90-5571. Bill Tapp, Petitioner v United States

498 US 905, 112 L Ed 2d 227, 111 S Ct 271.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 800.

No. 90-5572. Emmit V. Bookman, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 905, 112 L Ed 2d 227, 111 S Ct 271.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5573. John P. Croom, Petitioner v Gary L. Henman

498 US 905, 112 L Ed 2d 227, 111 S Ct 271.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 37.

No. 90-5579. Marie-Therese Halim Assaad-Faltas, Petitioner v University of Arkansas for Medical Sciences, et al.

498 US 905, 112 L Ed 2d 227, 111 S Ct 271.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1572.

No. 90-5584. Jessie Jerome Oliver, Petitioner v United States

498 US 905, 112 L Ed 2d 227, 111 S Ct 271.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1542.

No. 90-5592. James Eddie Garrett, Petitioner v United States

498 US 905, 112 L Ed 2d 227, 111 S Ct 272.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 903 F2d 1105.

No. 90-5593. Shirley Lorraine Lattimore, Petitioner v United States

498 US 905, 112 L Ed 2d 228, 111 S Ct 272.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 902.

No. 90-5595. Theodore Vickers, Petitioner v United States

498 US 905, 112 L Ed 2d 228, 111 S Ct 272.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 908 F2d 1417.

No. 90-5597. David Allen Van Omen, Petitioner v United States

498 US 905, 112 L Ed 2d 228, 111 S Ct 272.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5600. Ellus Yehuda, Petitioner v United States

498 US 905, 112 L Ed 2d 228, 111 S Ct 272.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 1563.

No. 90-5601. Randolph Willis Ringstad, Petitioner v M. Wannamaker, Warden, et al.

498 US 905, 112 L Ed 2d 228, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 1139.

No. 90-5611. James Thomas Blakely, aka Thomas James Blakely, Petitioner v United States

498 US 905, 112 L Ed 2d 228, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 1142.

No. 90-5616. Alfred Fragoso, Petitioner v United States; Nestor Delgado, Petitioner v United States; and Carlos Casiano, Petitioner v United States

498 US 905, 112 L Ed 2d 229, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 908 F2d 964.

No. 90-5619. Pedro Cruz, Petitioner v United States

498 US 906, 112 L Ed 2d 229, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 901 F2d 205.

No. 90-5620. Rafael Armas, aka Rafael Valdeolla Armas, Petitioner v United States

498 US 906, 112 L Ed 2d 229, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 905 F2d 1542.

No. 90-5626. Charles Eddie Mitchell, Petitioner v United States

498 US 906, 112 L Ed 2d 229, 111 S Ct 273.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 908 F2d 1289.

No. 90-5629. Jerome Mann, Petitioner v United States

498 US 906, 112 L Ed 2d 229, 111 S Ct 274.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 902 F2d 501.

No. 90-5630. Bonnie Lynn Lewis, Petitioner v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 274.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 907 F2d 773.

No. 90-5645. Arturo Rodriguez, Petitioner v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 274.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 704.

No. 90-5646. Robert Sylvester, et ux., Petitioners v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 274.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 909 F2d 1486.

No. 90-5647. Rudolph Sherman, Petitioner v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 274.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5654. Scott Evans Jones, Petitioner v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 275.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 899 F2d 1097.

No. 90-5665. Anthanasios Theodoropoulos, Petitioner v United States

498 US 906, 112 L Ed 2d 230, 111 S Ct 275.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consieration or decision of this petition.

Same case below, 904 F2d 697.

No. 90-5673. Joseph White, Petitioner v United States

498 US 906, 112 L Ed 2d 231, 111 S Ct 275.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 899 F2d 1220.

No. 90-5679. Peter Crossfield and Claudius Minott, Petitioners v United States

498 US 906, 112 L Ed 2d 231, 111 S Ct 275.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 284 App DC 258, 904 F2d 78.

No. 90-5684. Roger L. Lyle, Petitioner v John Jabe, Warden

498 US 906, 112 L Ed 2d 231, 111 S Ct 275, reh den 498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5689. Don Bourke, Petitioner v United States

498 US 906, 112 L Ed 2d 231, 111 S Ct 276.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 711.

No. 90-5693. Julian Roger Sanchez, Petitioner v United States

498 US 906, 112 L Ed 2d 231, 111 S Ct 276.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5696. Oliver Giles, Petitioner v Calvin Green, Warden

498 US 907, 112 L Ed 2d 231, 111 S Ct 276.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-5700. Blanche Elizabeth Dyer, Petitioner v United States

498 US 907, 112 L Ed 2d 232, 111 S Ct 276.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 910 F2d 530.

No. 90-5742. Ned N. Cary, Jr., Petitioner v Anheuser-Busch Companies, Inc., et al.

498 US 907, 112 L Ed 2d 232, 111 S Ct 276.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 699.

No. 89-1876. Florida, Petitioner v Johnnie Lee Jones

498 US 907, 112 L Ed 2d 232, 111 S Ct 276.

October 9, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Florida denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 559 So 2d 204.

No. 90-20. Hawaii, Petitioner v John Kalani Lincoln

498 US 907, 112 L Ed 2d 232, 111 S Ct 277.

October 9, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Hawaii denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 71 Haw 274, 789 P2d 497.

No. 89-1901. Prince Edward School Foundation, Petitioner v Hermitage Methodist Homes of Virginia, Inc.

498 US 907, 112 L Ed 2d 232, 111 S Ct 277.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied. Justice Marshall and Justice Souter took no part in the consideration or decision of this petition.

Same case below, 239 Va 46, 387 SE2d 740.

No. 89-1988. Berkshire Gas Company, et al., Petitioners v Associated Gas Distributors, et al.

No. 89-1989. Tennessee Small General Service Customer Group, et al., Petitioners v Associated Gas Distributors, et al.

No. 89-1990. Tennessee Gas Pipeline Company, Petitioner v Associated Gas Distributors, et al.

No. 89-2000. National Fuel Gas Supply Corporation, Petitioner v Associated Gas Distributors, et al.

No. 89-2016. Federal Energy Regulatory Commission, Petitioner v Associated Gas Distributors, et al.

498 US 907, 112 L Ed 2d 232, 111 S Ct 277, 111 S Ct 278.

October 9, 1990. The motion of Interstate Natural Gas Association for leave to file a brief as amicus curiae in No. 89-2016 is granted. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice Souter took no part in the consideration or decision of this motion and these petitions.

Same cases below, 282 App DC 142, 893 F2d 349.

No. 89-2001. Panhandle Eastern Pipe Line Company, et al., Petitioners v Columbia Gas Transmission Corporation, et al.

No. 90-131. Federal Energy Regulatory Commission, Petitioner v Columbia Gas Transmission Corporation, et al.

498 US 907, 112 L Ed 2d 233, 111 S Ct 278, 111 S Ct 279.

October 9, 1990. The motion of Interstate Natural Gas Association for leave to file a brief as amicus curiae is granted. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice Souter took no part in the consideration or decision of this motion and these petitions.

Same cases below, 282 App DC 386, 895 F2d 791.

No. 89-7745. Andy Dyke, Petitioner v United States

498 US 908, 112 L Ed 2d 233, 111 S Ct 279.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice White would grant certiorari. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 901 F2d 285.

No. 90-249. Ronald Lee Fee, et ux., Individually and as Next Friends of Tracy John Fee, a Minor, Petitioners v Joseph Milton Herndon

498 US 908, 112 L Ed 2d 233, 111 S Ct 279.

October 9, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied. Justice White would grant certiorari. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 900 F2d 804.

No. 89-7782. Ernest Ray Willis, Petitioner v Texas

498 US 908, 112 L Ed 2d 234, 111 S Ct 279.

October 9, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 785 SW2d 378.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5356. Christopher A. Burger, Petitioner v Walter Zant, Warden

498 US 908, 112 L Ed 2d 234, 111 S Ct 280, reh den 498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied. Justice Souter took no part in the consideration or decision of this petition.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5460. James Lee Jones, Jr., Petitioner v Tennessee

498 US 908, 112 L Ed 2d 234, 111 S Ct 280.

October 9, 1990. Petition for writ of Certiorari to the Supreme Court of Tennessee, Middle Division, denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 789 SW2d 545.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5471. Thomas Gerald Laney, Petitioner v Tennessee

498 US 908, 112 L Ed 2d 234, 111 S Ct 280.

October 9, 1990. Petition for writ

of certiorari to the Court of Criminal Appeals of Tennessee, Eastern Division, denied. Justice Souter took no part in the consideration or decision of this petition.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5477. Carlton Pope, Petitioner v Charles E. Thompson, Warden

498 US 908, 112 L Ed 2d 235, 111 S Ct 280.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied. Justice Souter took no part in the consideration or decision of this petition.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5488. William Wickline, Petitioner v Ohio

498 US 908, 112 L Ed 2d 235, 111 S Ct 281.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 50 Ohio St 3d 114, 552 NE2d 913.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5591. Timothy Wilson Spencer, Petitioner v Virginia

498 US 908, 112 L Ed 2d 235, 111 S Ct 281.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 240 Va 78, 393 SE2d 609.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 89-7838. Alexzene Hamilton, as Natural Mother and Next Friend to James Edward Smith, Petitioner v Texas

498 US 908, 112 L Ed 2d 236, 111 S Ct 281.

October 9, 1990. The motion of Chris Lonchar Kellogg for leave to intervene is denied. The petition for a writ of certiorari to the Court of Criminal Appeals of Texas is denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Justice Marshall, with whom Justice Blackmun joins, concurring.

I agree with Justice Stevens that the issue raised in this petition is important and merits resolution by this Court. I write to express my frustration with the Court's failure to avail itself of the ordinary procedural mechanisms that would have permitted us to resolve that issue in *this* case.

It is already a matter of public record that four Members of this Court voted to grant certiorari before petitioner was executed. See Hamilton v Texas, 497 US 1016, 111 L Ed 2d 772, 110 S Ct 3262 (1990) (Brennan, J., dissenting from denial of application for stay). According to established practice, this fact should have triggered a fifth vote to grant petitioner's application for a stay of his execution.* Indeed, this result flows naturally from the standard by which we evaluate stay applications, a central component of which is "whether four Justices are *likely* to vote to grant certiorari." Coleman v Paccar, Inc., 424 US 1301, 1302, 47 L Ed 2d 67, 96 S Ct 845 (1976) (Rehnquist, J., in chambers) (emphasis added); see also Maggio v Williams, 464 US 46, 48, 78 L Ed 2d 43, 104 S Ct 311 (1983) (per curiam) (same).

In my view, the Court's willingness in this case to dispense with the procedures that it ordinarily employs to preserve its jurisdiction only continues the distressing rollback of the legal safeguards traditionally afforded. Compare Boyde v California, 494 US 370, 387-388, 108 L Ed 2d 316, 110 S Ct 1190 (1990) (Marshall, J., dissenting) (criticizing diminution in standard used to assess unconstitutional jury instructions in capital cases); Barefoot v Estelle, 463 US 880, 912-914, 77 L Ed 2d 1090, 103 S Ct 3383 (1983) (Marshall, J., dissenting) (criticizing Court's endorsement of summary appellate procedures in capital cases); Autry v McKaskle, 465 US 1085, 1085-1086, 79 L Ed 2d 906, 104 S Ct 1458 (1984) (Marshall, J., dissenting from denial of certio rari) (critizing expedited consideration of petitions for certiorari in capital cases).

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* See Autry v Estelle, 464 US 1, 2, 78 L Ed 2d 1, 104 S Ct 20 (1983) (per curiam) ("Had applicant convinced four Members of the Court that certiorari would be granted on any of his claims, a stay would issue"); Darden v Wainwright, 473 US 928, 928-929, 87 L Ed 2d 699, 106 S Ct 21 (1985) (Powell, J., concurring in granting of stay); Straight v Wainwright, 476 US 1132, 1133, n 2, 90 L Ed 2d 683, 106 S Ct 2004 (1986) (Powell, J., concurring in denial of stay, joined by Burger, C. J., Rehnquist, and O'Connor, JJ.) (noting that "the Court has ordinarily stayed executions when four Members have voted to *grant* certiorari"); id., at 1134-1135, 90 L Ed 2d 683, 106 S Ct 2004 (Brennan, J., dissenting from denial of stay, joined by Marshall and Blackmun, JJ.) ("[W]hen four vote to grant certiorari in a capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the 'Rule of Four' will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits").

Justice Stevens, with whom Justice Blackmun joins, concurring.

This petition for a writ of certiorari raises important, recurring questions of law that should be decided by this Court. These questions concern the standards that the Due Process Clause of the Fourteenth Amendment mandates in a hearing to determine whether a death row inmate is competent to waive his constitutional right to challenge his conviction and sentence and whether he has made a knowing and intelligent waiver of this right.

James Edward Smith was convicted of murder and sentenced to death in Harris County, Texas, in 1984. Smith had a substantial history of mental illness, and his mental difficulties prompted a finding by the Texas trial court that he was not competent to represent himself on appeal. Pet for Cert, Exh. 2, p 13, Exhs. 4-8, 10-12. After his conviction, Smith vacillated between forceful insistence on prosecuting his own appeal and equally forceful insistence on abandoning any challenge to his conviction or his sentence. Pet for Cert, Exh. 2, pp 10-11, Exh. 11, p 2.

Petitioner is Smith's natural mother. Proceeding as Smith's "next friend," she attempted to establish her standing to litigate on her son's behalf and to have his execution stayed until his competence was established after a full adversarial hearing. She was unsuccessful. On May 23, 1990, without notice to petitioner, the Texas trial court held a nonadversarial hearing, made a finding that Smith was competent to make a decision regarding his execution, and set his execution for 12:01 a.m. on June 26, 1990. Pet for Cert, Exh. 3.

On June 22, over the dissent of Justice Teague,[1] the Texas Court of Criminal Appeals dismissed petitioner's "Emergency Application for Stay of Execution and Objections to Trial Court's Prior Proceedings." Ex parte Hamilton, No. 18,380-02 (en banc) (per curiam). On June 24, petitioner filed in this Court her petition for a writ of certiorari and her application for a stay of Smith's execution. Four Members of the Court voted to grant certiorari[2] and to stay the execution. Nevertheless, the stay application was denied, and Smith was executed on schedule.

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[1] "Teague, J., notwithstanding that such might, but probably only will cause a slight delay in carrying out applicant's obvious desire to carry into effect his long held death wish, as well as his strong belief that he will be reincarnated after he is killed, but believing that this Court, at least implicitly, has ruled that in a case such as this one, where the reasonable probability that the defendant is not competent to request that he be put to a premature death, or, to put it another way, to commit legal suicide through the hands of others, has been raised, it is necessary for the trial court to conduct a '*full* adversarial hearing' on the issue. Given the possible favorable evidence now available, a 'full adversarial hearing' show now be conducted in this cause. See Ex parte Jordan, 758 SW2d 250 (Tex Cr App 1988). Also see Ford v Wainwright, 477 US 399, 106 S Ct 2595, 92 L Ed 2d 335 (1986)." Ex parte Hamilton, No. 18,380-02 (Tex Crim App, June 22, 1990) (Teague, J., dissenting from order denying application for stay).

[2] See Hamilton v Texas, 497 US 1016, 111 L Ed 2d 772, 110 S Ct 3262 (1990) (Brennan, J., dissenting from denial of application for stay).

Smith's execution obviously mooted this case. The Court has therefore properly denied the petition for a writ of certiorari. This denial, however, does not evidence any lack of merit in the petition;[3] instead, the reason for the denial emphasizes the importance of confronting on the merits the substantial questions that were raised in this case.

No. 90-9. MCI Communications Corporation, et al., Petitioners v United States, et al.

498 US 911, 112 L Ed 2d 238, 111 S Ct 283.

October 9, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice O'Connor and Justice Souter took no part in the consideration or decision of this petition.

Same case below, 283 App DC 299, 900 F2d 283.

No. 90-263. Deloris M. Adams, et vir, Petitioners v Leisure Dynamics, Inc., et al.

498 US 911, 112 L Ed 2d 238, 111 S Ct 283.

October 9, 1990. The motion of respondents for taxation of attorney's fees and costs is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 902 F2d 959.

No. 90-289. F L Aerospace Corp., Petitioner v Aetna Casualty & Surety Company

498 US 911, 112 L Ed 2d 238, 111 S Ct 284.

October 9, 1990. The motion of Mid-America Legal Foundation for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Same case below, 897 F2d 214.

No. 90-298. Presbytery of Seattle, Petitioner v King County, Washington

498 US 911, 112 L Ed 2d 238, 111 S Ct 284.

October 9, 1990. The motion of

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[3] See Singleton v Commissioner, 439 US 940, 942, 58 L Ed 2d 335, 99 S Ct 335 (1978) (opinion of Stevens, J., respecting denial of certiorari).

American College of Real Estate Lawyers for leave to file a brief as amicus curiae is granted. The motion of Oregonians in Action for leave to file a brief as amicus curiae is granted. The motion of American Farm Bureau Federation for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the Supreme Court of Washington denied. Justice Souter took no part in the consideration or decision of these motions and this petition.

Same case below, 114 Wash 2d 320, 787 P2d 907.

No. 90-5177. Murray Hooper, Petitioner v Illinois

498 US 911, 112 L Ed 2d 239, 111 S Ct 284.

October 9, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied. Justice Marshall would grant certiorari. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 133 Ill 2d 469, 142 Ill Dec 93, 552 NE2d 684.

No. 90-5395. Paul Gregory House, Petitioner v Tennessee

498 US 912, 112 L Ed 2d 239, 111 S Ct 284.

October 9, 1990. The petition for a writ of certiorari to the Court of Criminal Appeals of Tennessee, Eastern Division, is denied. Justice Souter took no part in the consideration or decision of this petition.

Justice Marshall, dissenting.

In both Mills v Maryland, 486 US 367, 100 L Ed 2d 384, 108 S Ct 1860 (1988), and McKoy v North Carolina, 494 US 433, 108 L Ed 2d 369, 110 S Ct 1227 (1990), we vacated a death sentence based on jury instructions that, reasonably construed, prevented the jury from considering any mitigating circumstance it did not unanimously find to exist. Because I believe the instructions in this case suffer from the same infirmity, I would grant the petition for certiorari.

Petitioner was convicted of murder and sentenced to death. At the penalty phase of his capital proceeding, the trial judge instructed the jury that it could not impose the death penalty unless it found "*unanimously* that one or more . . . aggravating circumstances have been proven." Union Cty. C. C. A. No. 28 (Tenn Crim App, Dec. 15, 1989), p 2 (emphasis added). Next, the judge directed the jury to "consider *as heretofore indicated* any mitigating circumstances." Id., at 3 (emphasis added). The form provided to the jury for recording a death sentence stated, "We, the jury, *unanimously find that there are no mitigating circumstances* sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances. . . ." Id., at 5 (emphasis added).* Finding that the instructions did not require juror unanimity on mitigating factors, the Tennessee Court of Criminal Appeals affirmed. Id., at 6.

Assessment of petitioner's challenge to the disputed instructions is governed by our decisions in Mills v Maryland, supra, and McKoy v North Carolina, supra. In those decisions, we made clear that a rule preventing individual jurors from crediting mitigating circumstances not unanimously found to exist violated the cardinal principal of our capital jurisprudence that " 'the sentencer may not . . . *be precluded from considering* "any relevant mitigating evidence." ' " Mills, supra, at 374-375 (100 L Ed 2d 384, 108 S Ct 1860, quoting Skipper v South Carolina, 476 US 1, 4, 90 L Ed 2d 1, 106 S Ct 1669 (1986) in turn quoting Eddings v Oklahoma, 455 US 104, 114, 71 L Ed 2d 1, 102 S Ct 869 (1982) (emphasis added)); see McKoy, supra, at 439-440, 108 L Ed 2d 369, 110 S Ct 1227. The only issue in this case is whether the instructions furnished to petitioner's jury should be viewed as imposing a unanimity requirement.

In my view, our decision in Mills speaks directly to this question. In Mills, the jury received a verdict form listing each potential mitigating and aggravating circumstance along with corresponding "yes" and "no" boxes. The trial judge instructed the jurors to mark "yes" if they *unanimously* concluded that an aggravating circumstance had been proved; otherwise they were to mark "no." 480 US, at 378, 100 L Ed 2d 384, 108 S Ct 1860. The judge also instructed the jury that it had to be unanimous to mark "yes" for any mitigating factor. Id., at 378, and n 11, 100 L Ed 2d 384, 108 S Ct 1860. Mills challenged the constitutionality of his death sentence on the ground that the instructions required death if the jury unanimously found an aggravating circumstance but could not agree unanimously as to the existence of any particular mitigating circumstance. Id., at 371, 100 L Ed 2d 384, 108 S Ct 1860. The Maryland Court of Appeals rejected this challenge, construing the verdict form to require unanimity in order to mark "no" with respect to a given mitigating circumstance, and not to preclude each juror from individually weighing any nonunanimous mitigating circumstance in considering whether to impose a death sentence. Id., at 372-373, 100 L Ed 2d 384, 108 S Ct 1860.

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* In pertinent part, the jury instructions read as follows:

"Your verdict must be *unanimous* as to either form of punishment [death or life imprisonment]. . . .

. . . .

"No death penalty shall be imposed unless you find *unanimously* that one or more of the following specified statutory aggravating circumstances have been proven . . . beyond a reasonable doubt.

. . . .

"In arriving at the punishment, the jury shall consider *as heretofore indicated* any mitigating circumstances which shall include but not be limited to . . . .

. . . .

"If the jury *unanimously* determines that at least one statutory aggravated circumstance or several statutory circumstances have been proved . . . and said circumstance or circumstances are not outweighed by any sufficiently substantial mitigating circumstances, the sentence shall be death.

. . . .

"[T]he jury must include in its finding, that there were no mitigating circumstances sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances so found.

Upon such *unanimous finding,* each member of the jury shall affix his or her signature to said written findings and then return the said written verdict to the Court.

. . . .

"You will be provided with two punishment forms. . . .

"[On the Punishment of Death Form, should the jury impose the death sentence, it was required to attest:] We, the jury, *unanimously find that there are no mitigating circumstances* sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances listed above. . . .

. . . .

"You may take the charge with you." Union Cty. C. C. A. No. 28, pp 2-5 (emphasis added).

According to the Tennessee Court of Criminal Appeals, these instructions conform to the language and structure of the then-effective Tennessee capital punishment statute, Tenn Code Ann § 39-2-203 (1982). See Union Cty. C. C. A. No. 28, p 5. This provision has since been repealed and recodified at Tenn Code Ann § 39-13-204 (Supp 1990).

Because we could not conclude, "with any degree of certainty, that the jury did not adopt [Mills'] interpretation," id., at 377, 100 L Ed 2d 384, 108 S Ct 1860, we vacated his death sentence. We emphasized that nothing in the instructions or the form clarified for the jury that it could do something *other than* answer "no" if it could not reach unanimity on a particular mitigating circumstance. Id., at 378-379, and n 11, 100 L Ed 2d 384, 108 S Ct 1860. Thus, the verdict forms and instructions used in Mills created the "intuitively disturbing" possibility that a sole juror *could have* precluded the remaining eleven jurors from considering mitigating circumstances which they all believed to exist. Id., at 373-374, 100 L Ed 2d 384, 108 S Ct 1860. The prospect that a single, holdout juror could have blocked such consideration, and consequently required the jury to impose the death peanlty, was an outcome "we dare[d] not risk." Id., at 384, 100 L Ed 2d 384, 108 S Ct 1860. We concluded that it would be the "height of arbitrariness" to uphold a death sentence in such circumstances. Id., at 374, 100 L Ed 2d 384, 108 S Ct 1860.

The jury instructions in this case present the same impermissible risk. After charging the jury that it had to find aggravating circumstances "unanimously," the trial judge instructed the jury to consider mitigating circumstances "as heretofore indicated." The natural inference from the words "as heretofore indicated" is that findings of mitigating circumstances, like findings of aggravating circumstances, had to be unanimous. Moreover, as in Mills, the trial court did not instruct the jury on what it should do if it could not reach a unanimous conclusion on a potential mitigating circumstance. Nowhere did the instructions even remotely suggest that jurors were free to exercise individual judgment in considering nonunanimous mitigating factors. Rather, the jury appeals to have been guided in the opposite direction by the "as heretofore indicated" language. The inference that nonunanimous mitigating factors must be disregarded entirely is reinforced by the trial judge's repeated statements that the jury could impose the death penalty only if it found "unanimously" that no mitigating circumstances outweighed any aggravating circumstances. Under these circumstances, reasonable jurors could justifiably have believed that they were not to consider any mitigating circumstance unless all jurors unanimously found it to exist.

Like the postverdict construction furnished by the Maryland Court of Appeals in Mills, the Tennessee

Court of Criminal Appeals' conclusion that jurors remained free under Tennessee law to consider nonunanimous mitigation factors is beside the point. The decisive issue under Mills is whether the *jury* could plausibly have read the instructions to require unanimity as to the existence of each mitigating circumstance. Because there is a "reasonable likelihood" that the jury in this case so understood the challenged instructions, Boyde v California, 494 US 370, 381, 108 L Ed 2d 316, 110 S Ct 1190 (1990), I would grant the petition for certiorari and reverse.

Even if I did not believe that this case otherwise merited review, adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (Marshall, J., dissenting), I would grant the petition for certiorari and vacate the death sentence in this case.

No. 90-315. In Re Victor E. Murgo and Joseph LaSpesa, Petitioners

498 US 894, 112 L Ed 2d 242, 111 S Ct 287.

October 9, 1990. The petition for writ of mandamus is denied. Justice Souter took no part in the consideration or decision of this petition.

No. 89-1719. Joseph Pantoja, et al., Petitioners v Texas Gas Transmission Corporation, et al.

498 US 915, 112 L Ed 2d 242, 111 S Ct 287.

October 9, 1990. The motion of petitioner for leave to proceed further herein in forma pauperis is granted. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Former Decision, 497 US 1024, 111 L Ed 2d 782, 110 S Ct 3272.

No. 89-2013. Cling Surface Company, Inc., Petitioner v Dannie Lee Gean, et ux.

498 US 915, 112 L Ed 2d 242, 111 S Ct 288.

October 12, 1990. The petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

No. A-256. Quentin L. Kopp and Ross Johnson, Applicants v Service Employees International Union, AFL-CIO, et al.

498 US 915, 112 L Ed 2d 242, 111 S Ct 288.

October 12, 1990. The application for stay of enforcement of injunction issued by the United States District Court for the Eastern District of California, presented to The Chief Justice, and by him referred to the Court, is denied.

No. 89-1986. Ohio Casualty Insurance Company, Petitioner v G. Amador Corporation

498 US 916, 112 L Ed 2d 243, 111 S Ct 288.

October 15, 1990. The petition for writ of certiorari to the United States Court of Appeal of California, Second Appellate District, in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

No. 90-272. Tyrone Brooks, et al., Appellants v Georgia State Board of Elections, et al.

No. 90-332. Georgia State Board of Elections, et al., Appellants v Tyrone Brooks, et al.

498 US 916, 112 L Ed 2d 243, 111 S Ct 288.

October 15, 1990. Appeals from the United States District Court for the Southern District of Georgia. The judgments are affirmed.

Same cases below, 775 F Supp 1470.

No. 90-5183. William C. Cary, Jr., Petitioner v United States

498 US 916, 112 L Ed 2d 243, 111 S Ct 288.

October 15, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of United States v Eichman, 496 US 310, 110 L Ed 2d 287, 110 S Ct 2404 (1990).

Same case below, 897 F2d 917.

No. ——. Lionel Laliberte, Petitioner v United States

498 US 916, 112 L Ed 2d 243, 111 S Ct 289.

October 15, 1990. The motion to direct the Clerk to file the petition for a writ of certiorari out of time is denied.

No. ——. In the Matter of Julius Stern

498 US 916, 112 L Ed 2d 243, 111 S Ct 289.

October 15, 1990. The application for readmission to the Bar, presented to Justice Marshall, and by him referred to the Court, is denied. Justice Stevens would grant the application.

No. ——. Dewayne W. Waters, Petitioner v Maryland

498 US 916, 112 L Ed 2d 243, 111 S Ct 289.

October 15, 1990. The motion for leave to proceed in forma pauperis without an affidavit of indigency executed by the petitioner is granted.

No. A-259. Cinema Blue of Charlotte, Inc., et al., Applicants v North Carolina

498 US 916, 112 L Ed 2d 244, 111 S Ct 289.

October 15, 1990. The application for recall and stay of mandate, addressed to Justice Marshall and referred to the Court, is denied.

No. D-879. In the Matter of Disbarment of Ronald Etheridge Anderson

498 US 917, 112 L Ed 2d 244, 111 S Ct 289.

October 15, 1990. Disbarment order entered.

No. D-899. In the Matter of Disbarment of Michael E. Donnelly

498 US 917, 112 L Ed 2d 244, 111 S Ct 289.

October 15, 1990. Disbarment order entered.

No. D-902. In the Matter of Disbarment of William A. Metz

498 US 917, 112 L Ed 2d 244, 111 S Ct 290.

October 15, 1990. Disbarment order entered.

No. D-910. In the Matter of Disbarment of Fredric Fedje Hendrickson

498 US 917, 112 L Ed 2d 244, 111 S Ct 290.

October 15, 1990. Disbarment order entered.

No. D-918. In the Matter of Disbarment of Howell Lovell, Jr.

498 US 917, 112 L Ed 2d 244, 111 S Ct 290.

October 15, 1990. Disbarment order entered.

No. D-923. In the Matter of Disbarment of Charles Stanley Morrow

498 US 917, 112 L Ed 2d 244, 111 S Ct 290.

October 15, 1990. Disbarment order entered.

No. D-939. In the Matter of Disbarment of Carl M. Mazzocone

498 US 917, 112 L Ed 2d 244, 111 S Ct 290.

October 15, 1990. It is ordered that Carl M. Mazzocone, of Philadelphia, Pennsylvania, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-940. In the Matter of Disbarment of Robert Allen Moore

498 US 917, 112 L Ed 2d 245, 111 S Ct 290.

October 15, 1990. It is ordered that Robert Allen Moore, of Brownsville, Texas, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-941. In the Matter of Disbarment of J. Mack Ausburn

498 US 917, 112 L Ed 2d 245, 111 S Ct 290.

October 15, 1990. It is ordered that J. Mack Ausburn, of Big Spring, Texas, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-942. In the Matter of Disbarment of Jon Gregory Logan

498 US 917, 112 L Ed 2d 245, 111 S Ct 291.

October 15, 1990. It is ordered that Jon Gregory Logan, of Holton, Kansas, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-943. In the Matter of Disbarment of Bruce Cameron Fraser

498 US 917, 112 L Ed 2d 245, 111 S Ct 291.

October 15, 1990. It is ordered that Bruce Cameron Fraser, of Winston-Salem, North Carolina, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-944. In the Matter of Disbarment of Alan H. Russell

498 US 918, 112 L Ed 2d 245, 111 S Ct 291.

October 15, 1990. It is ordered that Alan H. Russell, of Van Nuys, California, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-945. In the Matter of Disbarment of Edward Emmet Heavy

498 US 918, 112 L Ed 2d 246, 111 S Ct 291.

October 15, 1990. It is ordered that Edward Emmet Heavy, of San Francisco, California, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-946. In the Matter of Disbarment of Donald J. Richardson, Jr.

498 US 918, 112 L Ed 2d 246, 111 S Ct 291.

October 15, 1990. It is ordered that Donald J. Richardson, Jr., of San Francisco, California, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 111, Original. State of Delaware, Plaintiff v State of New York

498 US 918, 112 L Ed 2d 246, 111 S Ct 292.

October 15, 1990. The motion of South Carolina for leave to intervene and adopt complaint is referred to the Special Master.

No. 89-1027. Norfolk and Western Railway Company, et al., Petitioners v American Train Dispatchers' Association, et al.

No. 89-1028. CSX Transportation, Inc., Petitioner v Brotherhood of Railway Carmen, et al.

498 US 918, 112 L Ed 2d 246, 111 S Ct 292.

October 15, 1990. The motion of respondents American Train Dispatchers' Association, et al. to dismiss is denied.

No. 89-1784. Insurance Company of the State of Pennsylvania, et al., Petitioners v Ben Cooper, Inc.

498 US 918, 112 L Ed 2d 246, 111 S Ct 292.

October 15, 1990. The motion of the Solicitor General for divided argument is granted to be divided as follows: 30 minutes for petitioners; 20 minutes for respondent; and 10 minutes for the Solicitor General. The request for additional time for oral argument is denied.

No. 90-96. Frederick A. Siegert, Petitioner v H. Melvyn Gilley

498 US 918, 112 L Ed 2d 246, 111 S Ct 292.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit granted.

Same case below, 282 App DC 392, 895 F2d 797.

No. 88-7247. Bryan Stuart Lankford, Petitioner v Idaho

498 US 919, 112 L Ed 2d 247, 111 S Ct 292.

October 15, 1990. The motion of petitioner for leave to proceed in forma pauperis is granted and petition for writ of certiorari to the Supreme Court of Idaho granted limited to Question II presented by the petition.

Same case below, 116 Idaho 279, 775 P2d 593.

No. 89-1922. Pamila Williams, Petitioner v United States

498 US 919, 112 L Ed 2d 247, 111 S Ct 293.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 89-2029. Shell Oil Company, Petitioner v Raymond J. Leonardini

498 US 919, 112 L Ed 2d 247, 111 S Ct 293.

October 15, 1990. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

Same case below, 216 Cal App 3d 547, 264 Cal Rptr 883.

No. 89-7600. Vincent Darnley Harris, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 919, 112 L Ed 2d 247, 111 S Ct 293.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 897 F2d 536.

No. 89-7683. Charles Young, Petitioner v Florida, et al.

498 US 919, 112 L Ed 2d 247, 111 S Ct 293, reh den 498 US 1017, 112 L Ed 2d 596, 111 S Ct 592.

October 15, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District, denied.

No. 89-7775. Favis Clay Martin, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 919, 112 L Ed 2d 247, 111 S Ct 293.

October 15, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 89-7779. Elias Castillo Tijerina, Petitioner v United States

498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 89-7789. Phillip Robert Castillo, Petitioner v California

498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

October 15, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 217 Cal App 3d 1020, 266 Cal Rptr 271.

No. 89-7833. James Williams, Petitioner v David Gooding, et al.

498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 894 F2d 1338.

No. 89-7867. William Franklin McNabb, Petitioner v Charlie Jones, Warden

498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 264.

No. 89-7873. Carl D. McQuillion, Petitioner v Ron Koenig, Chairman, California Board of Prison Terms

498 US 919, 112 L Ed 2d 248, 111 S Ct 294, reh den 498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-61. Nathaniel Johnson, Jr., Petitioner v United States

498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

October 15, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 53.

No. 90-144. Safe Flight Instrument Corporation, Petitioner v Sundstrand Data Control, Inc.

498 US 919, 112 L Ed 2d 249, 111 S Ct 295.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 899 F2d 1228.

No. 90-145. James J. Lyons, Petitioner v United States

498 US 920, 112 L Ed 2d 249, 111 S Ct 295.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 898 F2d 210.

No. 90-147. Dennis Fryman, Petitioner v United States

498 US 920, 112 L Ed 2d 249, 111 S Ct 295.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 901 F2d 79.

No. 90-162. Rockford Memorial Corporation, et al., Petitioners v United States

498 US 920, 112 L Ed 2d 249, 111 S Ct 295.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 898 F2d 1278.

No. 90-182. V-1 Oil Company, Petitioner v Steven P. Gerber

No. 90-351. Steven P. Gerber, Petitioner v V-1 Oil Company

498 US 920, 112 L Ed 2d 249, 111 S Ct 295.

October 15, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same cases below, 902 F2d 1482.

No. 90-191. David M. Buckley and John E. Reid and Associates, Inc., Petitioners v Tammie R. Ellis

498 US 920, 112 L Ed 2d 249, 111 S Ct 296.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of Colorado denied.

Same case below, 790 P2d 875.

No. 90-326. Datapoint Corporation, Petitioner v Northern Telecom, Inc.

498 US 920, 112 L Ed 2d 250, 111 S Ct 296.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 908 F2d 931.

No. 90-329. Bernard Harris, et al., Petitioners v Traylor Bros., Inc., et al.

498 US 920, 112 L Ed 2d 250, 111 S Ct 296.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-335. Gerald M. Sparks, Petitioner v Character and Fitness Committee of Kentucky

498 US 920, 112 L Ed 2d 250, 111 S Ct 296, reh den 498 US 1009, 112 L Ed 2d 580, 111 S Ct 574.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

No. 90-337. Robert Clifford Valley, Petitioner v Rosalie Gail Valley

498 US 920, 112 L Ed 2d 250, 111 S Ct 296.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 97 Or App 95, 775 P2d 332 and 99 Or App 252, 781 P2d 1219.

No. 90-338. William H. Coffey, Petitioner v PSLJ, Inc.

498 US 920, 112 L Ed 2d 250, 111 S Ct 296.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 699.

No. 90-339. Celotex Corporation, Petitioner v John E. Johnson, et ux.

498 US 920, 112 L Ed 2d 250, 111 S Ct 297.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 1281.

No. 90-343. Flossie Williams McMurry, Petitioner v Steven Amos, Chancery Clerk, Copiah County, Mississippi, et al.

498 US 920, 112 L Ed 2d 250, 111 S Ct 297.

October 15, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-346. Toledo Police Patrolman's Association, Local 10, I.U.P.A., et al., Petitioners v City of Toledo, et al.

498 US 920, 112 L Ed 2d 251, 111 S Ct 297, reh den 498 US 1017, 112 L Ed 2d 596, 111 S Ct 592.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 36.

No. 90-347. Fred Daniel Van Dyken, Petitioner v Montana

498 US 920, 112 L Ed 2d 251, 111 S Ct 297.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Montana denied.

Same case below, 242 Mont 415, 791 P2d 1350.

No. 90-348. New Era Publications International, ApS, Petitioner v Carol Publishing Group

498 US 921, 112 L Ed 2d 251, 111 S Ct 297.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 152.

No. 90-349. Marvin Rathert, et al., Petitioners v Village of Peotone, Illinois, et al.

498 US 921, 112 L Ed 2d 251, 111 S Ct 297.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 903 F2d 510.

No. 90-352. Sharon Navratil, Individually and Guardian ad Litem for Serena Navratil, a Minor, Petitioner v California State Automobile Association Inter-Insurance Bureau

498 US 921, 112 L Ed 2d 251, 111 S Ct 298.

October 15, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-353. Joseph Camaione, Sr., Petitioner v Borough of Latrobe

498 US 921, 112 L Ed 2d 251, 111 S Ct 298.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied.

Same case below, 523 Pa 363, 567 A2d 638.

No. 90-381. Deere & Company, Petitioner v T. J. Kennedy, et al.

498 US 921, 112 L Ed 2d 252, 111 S Ct 298.

October 15, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Third District, denied.

Same case below, 192 Ill App 3d 18, 139 Ill Dec 225, 548 NE2d 610.

No. 90-399. Curtis L. Wrenn, Petitioner v United States, et al.

498 US 921, 112 L Ed 2d 252, 111 S Ct 298, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 592.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1472.

No. 90-426. David E. Gantner, et ux., Petitioners v Commissioner of Internal Revenue

498 US 921, 112 L Ed 2d 252, 111 S Ct 298.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 241.

No. 90-442. Albert Pontani, Petitioner v United States

498 US 921, 112 L Ed 2d 252, 111 S Ct 298.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-452. Emma M. L. Conti, Petitioner v Commissioner of Internal Revenue, et al.

498 US 921, 112 L Ed 2d 252, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 693.

No. 90-469. Mario L. Bejasa, Jr., Petitioner v United States

498 US 921, 112 L Ed 2d 252, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 137.

No. 90-471. WPIX, Inc., Petitioner v National Labor Relations Board

498 US 921, 112 L Ed 2d 253, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 906 F2d 898.

No. 90-487. Richard Zzie, Petitioner v United States

498 US 921, 112 L Ed 2d 253, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 264.

No. 90-5011. Joe Robert Herrera, Petitioner v Pat Burroughs, et al.

498 US 921, 112 L Ed 2d 253, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5016. Kristopher K. Anderson, Petitioner v United States

498 US 922, 112 L Ed 2d 253, 111 S Ct 299.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 708.

No. 90-5060. Johnny Wells, Petitioner v Jerome D. Lacke, et al.

498 US 922, 112 L Ed 2d 253, 111 S Ct 300.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5115. Willie Royal, Petitioner v United States

498 US 922, 112 L Ed 2d 253, 111 S Ct 300.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 159.

No. 90-5141. James Louis Whittlesey, Petitioner v Circuit Court for Baltimore County, Maryland, et al.

498 US 922, 112 L Ed 2d 253, 111 S Ct 300.

October 15, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 897 F2d 143.

No. 90-5143. David Stewart, Petitioner v United States

498 US 922, 112 L Ed 2d 254, 111 S Ct 300.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 260.

No. 90-5198. Charles Reliford, Petitioner v United States

498 US 922, 112 L Ed 2d 254, 111 S Ct 300.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 828.

No. 90-5266. Douglas James Sisco, Petitioner v County of Los Angeles, et al.

498 US 922, 112 L Ed 2d 254, 111 S Ct 301, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5270. Gary Keith Vernor, Petitioner v United States

498 US 922, 112 L Ed 2d 254, 111 S Ct 301.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 1182.

No. 90-5521. James Steele, Petitioner v Federal Land Bank of Jackson, et al.

498 US 922, 112 L Ed 2d 254, 111 S Ct 301.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 563 So 2d 887.

No. 90-5522. Bobby Tippitt, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 922, 112 L Ed 2d 254, 111 S Ct 301.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 903 F2d 552.

No. 90-5525. Curtis L. Harris, Petitioner v Duane Rowe, et al.

498 US 922, 112 L Ed 2d 255, 111 S Ct 301.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 700.

No. 90-5533. Donald Shury, Petitioner v John Rocco

498 US 922, 112 L Ed 2d 255, 111 S Ct 301.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

No. 90-5543. Timothy L. Malumphy, Petitioner v Samuel Lewis, Director, Arizona Department of Corrections

498 US 922, 112 L Ed 2d 255, 111 S Ct 302.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied.

No. 90-5545. Wilfred Hill, et ux., Petitioners v General Motors Corporation, et al.

498 US 922, 112 L Ed 2d 255, 111 S Ct 302.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 529.

No. 90-5552. Terry Shrader, Petitioner v William Hopkins, et al.

498 US 922, 112 L Ed 2d 255, 111 S Ct 302.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

No. 90-5553. William Schlicher, Petitioner v Fritz Young, et al.

498 US 923, 112 L Ed 2d 255, 111 S Ct 302, reh den 498 US 1008, 112 L Ed 2d 579, 111 S Ct 572.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5555. Joseph Sulak, Petitioner v United States, et al.

498 US 923, 112 L Ed 2d 255, 111 S Ct 302.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 41.

No. 90-5558. Aaron Holsey, Petitioner v James H. Baumgarten, et al.

498 US 923, 112 L Ed 2d 256, 111 S Ct 302.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 28.

No. 90-5559. Aaron Holsey, Petitioner v Maryland Parole Commission, et al.

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 28.

No. 90-5562. Jerald Jabbar Love, Petitioner v Monroe County Presentment Agency

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 721, 557 NYS2d 876, 557 NE2d 112.

No. 90-5563. Rudolph McCollum, et ux., Petitioners v Williams Leasing, Inc., et al.

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1565.

No. 90-5565. Andrew E. Muldowney, Petitioner v Pennsylvania

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 395 Pa Super 655, 570 A2d 590.

No. 90-5634. William W. Moore, Petitioner v Jack R. Duckworth, Superintendent, Indiana State Reformatory, et al.

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 897 F2d 531.

No. 90-5638. Marcos Rondon, Petitioner v United States

498 US 923, 112 L Ed 2d 256, 111 S Ct 303.

October 15, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1141.

No. 90-5642. Lionel F., Petitioner v City of New York

498 US 923, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 747, 559 NYS2d 228, 558 NE2d 30.

No. 90-5652. David Spencer, Petitioner v United States

498 US 923, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5670. Kenneth E. Frick, Petitioner v United States, et al.

498 US 923, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 150.

No. 90-5713. Andre Phillips, Petitioner v Eugene Nuth, Warden, et al.

498 US 923, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1139.

No. 90-5715. German Alonso Chavarriaga-Torres, Petitioner v United States

498 US 924, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1473.

No. 90-5718. James Lamont Johnson, Petitioner v United States

498 US 924, 112 L Ed 2d 257, 111 S Ct 304.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 222.

No. 90-5719. Blane Neely, Petitioner v Donald T. Vaughn, Superintendent, State Correctional Institution and Diagnostic and Classification Center at Graterford, et al.

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5720. Phillip Bruce Lang, Petitioner v United States

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 618.

No. 90-5722. Marvin Leon Grimm, Jr., Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied.

No. 90-5735. Kevin Boley, Petitioner v Iowa

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Iowa denied.

Same case below, 456 NW2d 674.

No. 90-5776. James Stomner, Petitioner v Darrell Kolb, Superintendent, Fox Lake Correctional Institution, et al.

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 903 F2d 1123.

No. 89-1902. Dennis E. Pryba, Barbara A. Pryba, Educational Books, Inc., and Jennifer G. Williams, Petitioners v United States

498 US 924, 112 L Ed 2d 258, 111 S Ct 305.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 748.

Justice White, dissenting.

One of the questions presented in this case is the nature of the agreement necessary to sustain a conviction under the Racketeer Influenced and Corrupt Organizations (RICO) conspiracy statute, 18 USC § 1962(d) [18 USCS § 1962(d)]. Section 1962(d) provides that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c)" of § 1962. Here, petitioners were convicted under that statute for conspiring to violate § 1962(a), which provides in relevant part:

> "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

Title 18 USC § 1961(5) [18 USCS § 1961(5)] defines the term "pattern of racketeering activity" to require at least two acts of racketeering activity.

The trial court in this case instructed the jury that to convict petitioners of RICO conspiracy, the Government had to prove that " 'each defendant agreed to personally commit or aid and abet two or more acts of racketeering in violation of Section 1962(a) *or* that each defendant agreed that *another co-conspirator* would commit two or more acts of racketeering in violation of 1962(a).' " 900 F2d 748, 760 (CA4 1990) (emphasis added). In affirming petitioners' convictions, the United States Court of Appeals for the Fourth Circuit joined a majority of Courts of Appeals in holding that a conviction for RICO conspiracy does not require that the defendant personally agree to commit two or more predicate acts of racketeering; rather, it is sufficient if the defendant agrees to the commission of the predicate acts by another co-conspirator. See ibid.

As the Fourth Circuit acknowledged, ibid., two Courts of Appeals have adopted a contrary view, holding that a RICO conspiracy conviction requires that the defendant have agreed to personally commit two or more predicate acts. See United States v Ruggiero, 726 F2d 913, 921 (CA2), cert denied sub nom. Rabito v United States, 469 US 831, 83 L Ed 2d 60, 105 S Ct 118 (1984); United States v Winter, 663 F2d 1120, 1136 (CA1 1981), cert denied, 460 US 1011, 75 L Ed 2d 479, 103 S Ct 1249 (1983). I have voted in the past to resolve the conflict among the Courts of Appeals on this issue. See Adams v United States, 474 US 971, 88 L Ed 2d 321, 106 S Ct 336 (1985) (dissenting opinion). As I noted there, if the majority view is correct, "Congress' intent is being frustrated in those circuits which adhere to the narrower view of RICO conspiracy." Id., at 973, 88 L Ed 2d 321, 106 S Ct 336. On the other hand, if the minority view is correct, "defendants are being exposed to conviction for behavior Congress did not intend to reach under § 1962(d)." Ibid. To resolve the conflict, I would grant certiorari, limited to Question 5 presented in the petition for certiorari.

No. 89-7634. Patrick Charles McKenna, Petitioner v Nevada

498 US 925, 112 L Ed 2d 260, 111 S Ct 306.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 1032, 835 P2d 52.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5047. Edward Bennett, Petitioner v Nevada

498 US 925, 112 L Ed 2d 260, 111 S Ct 307.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 135, 787 P2d 797.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5101. Ernest Porter, Petitioner v Pennsylvania

498 US 925, 112 L Ed 2d 260, 111 S Ct 307, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 15, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

Same case below, 524 Pa 162, 569 A2d 942.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5403. Leonel Torres Herrera, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 925, 112 L Ed 2d 260, 111 S Ct 307.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 944.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-221. Jim Mattox, Attorney General of Texas, Petitioner v Trans World Airlines, Inc., et al.

No. 90-232. Attorney General of California, et al., Petitioners v Trans World Airlines, Inc., et al.

498 US 926, 112 L Ed 2d 261, 111 S Ct 307.

October 15, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice Blackmun would dismiss the petitions for writs of certiorari as moot.

Same cases below, 897 F2d 773.

No. 90-323. Carriers Container Council, Inc., Petitioner v Mobile Steamship Association, Inc., et al.

498 US 926, 112 L Ed 2d 261, 111 S Ct 308.

October 15, 1990. The motion of International Longshoremen's Association, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 896 F2d 1330 and 904 F2d 28.

No. 90-327. Mutual Life Insurance Company of New York, et al., Petitioners v Telly Kanakis, et ux.

498 US 926, 112 L Ed 2d 261, 111 S Ct 308.

October 15, 1990. The motion of American Council of Life Insurance, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-370. Republic National Bank of Miami, Petitioner v Fidelity and Deposit Company of Maryland

498 US 926, 112 L Ed 2d 261, 111 S Ct 308.

October 15, 1990. The motion of American Bankers Association, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 894 F2d 1255.

No. 90-5454. Chester L. Draper, Petitioner v Ohio

498 US 916, 112 L Ed 2d 261, 111 S Ct 308, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 15, 1990. The petition for a writ of certiorari to the Court of Appeals of Ohio, Clermont County, is dismissed for want of jurisdiction.

No. 90-5605. Michael Wisniewski, Petitioner v Johnny Kennard, et al.

498 US 926, 112 L Ed 2d 262, 111 S Ct 309.

October 15, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White and Justice Blackmun would grant certiorari.

Same case below, 901 F2d 1276.

No. 90-5537. In Re Arnett Thomas, Petitioner

498 US 918, 112 L Ed 2d 262, 111 S Ct 309.

October 15, 1990. The petition for writ of mandamus is denied.

No. 88-7619. Andrew Edward Robertson, Petitioner v California

498 US 926, 112 L Ed 2d 262, 111 S Ct 309.

October 15, 1990. The motion of petitioner for leave to file second petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this motion.

Former Decision, 493 US 879, 107 L Ed 2d 169, 110 S Ct 216.

[498 US 5]

BILLY J. TEMPLE, Petitioner

v

SYNTHES CORPORATION, LTD.

498 US 5, 112 L Ed 2d 263, 111 S Ct 315, reh den 498 US 1042, 112 L Ed 2d 704, 111 S Ct 715

[No. 90-295]

Decided November 5, 1990.

Decision: Federal District Court's dismissal of products liability diversity suit for failure to join potential joint tortfeasors held erroneous, under Rule 19 of Federal Rules of Civil Procedure.

SUMMARY

After a doctor had performed surgery at a Louisiana hospital to implant a "plate and screw device" in the lower spine of a patient who was a Mississippi resident, and after the device's screws had broken off inside the patient's back, the patient (1) filed a diversity suit in the United States District Court for the Eastern District of Louisiana against the Pennsylvania corporation which had manufactured the device, for allegedly defective design and manufacture; (2) at the same time, filed a state administrative proceeding against the doctor and the hospital for alleged malpractice and negligence; and (3) at the conclusion of the administrative proceeding, filed suit against the doctor and the hospital in Louisiana state court. The corporation moved to dismiss the federal suit for failure to join necessary parties pursuant to Rule 19 of the Federal Rules of Civil Procedure, and the District Court, citing the interest of judicial economy, ordered the patient to join the doctor and the hospital or risk dismissal. When the patient failed to join the doctor and the hospital, the District Court dismissed the suit with prejudice. On appeal, the United States Court of Appeals for the Fifth Circuit, affirming, expressed the view that (1) it was prejudicial to have the separate litigations being carried on, where the claims overlapped; and (2) therefore, the District Court had not abused its discretion in ordering joinder (898 F2d 152). A petition for rehearing was denied.

Granting certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and remanded the case. In a per curiam opinion expressing the unanimous view of the court, it was held that it was error for the District Court to label the doctor and the hospital as indispensable parties, under Rule 19(b) of the Federal Rules, and to dismiss the suit against the corporation with prejudice for failure to join the doctor and hospital, because (1) the doctor and the hospital, as potential joint tortfeasors, were merely permissive parties, under Rule 19(a) of the Federal Rules, and (2) thus, no inquiry under Rule 19(b) was necessary, for the threshold requirements of Rule 19(a) had not been satisfied.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

59 Am Jur 2d, Parties §§ 96-102, 110-112, 119-123; 63 Am Jur 2d, Products Liability § 865

26 Federal Procedure, L Ed, Parties §§ 59:75-59:83, 59:92-59:98, 59:134, 59:135, 59:174

1 Federal Procedural Forms, L Ed, Actions in District Court §§ 1:252, 1:253, 1:255, 1:264-1:266

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 1001-1003, 1013-1015; 19 Am Jur Pl & Pr Forms (Rev), Parties, Forms 83-85, 87-89

3 Am Jur Trials 681, Tactics and Strategy of Pleading; 5 Am Jur Trials 1, Whom to Sue—Multiple Defendants; 12 Am Jur Trials 1, Products Liability Cases; 25 Am Jur Trials 1, Hidden and Multiple Defendant Tort Litigation

USCS Court Rules, Federal Rules of Civil Procedure, Rule 19

Am Law Prod Liab 3d §§ 51:4-51:7

US L Ed Digest, Appeal §§ 910.6, 1368, 1408, 1677, 1692.3; Courts § 538.12; Dismissal, Discontinuance, and Nonsuit § 16; Parties §§ 40, 82

Index to Annotations, Civil Procedure Rules; Dismissal, Discontinuance, and Nonsuit; Joinder of Parties; Products Liability

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Who must be joined in action as person "needed for just adjudication" under Rule 19(a), Federal Rules of Civil Procedure. 22 ALR Fed 765.

Validity, construction, and application of Rule 19(b) of Federal Rules of Civil Procedure, as amended in 1966, providing for determination to be made by court to proceed with or dismiss action when joinder of person needed for just adjudication is not feasible. 21 ALR Fed 12.

Products liability in connection with prosthesis or other product designed to be surgically implanted in patient's body. 1 ALR4th 921.

HEADNOTE

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 1368, 1408, 1677, 1692.3; Courts § 538.12; Dismissal, Discontinuance, and Nonsuit § 16; Parties §§ 40, 82 — failure to join potential joint tortfeasors — federal rules — abuse of discretion — grant of certiorari — reversal — remand

With respect to a federal diversity suit for allegedly defective manufacture and design, which suit has been filed by a patient who is a Mississippi resident against a Pennsylvania corporation which manufactured a "plate and screw device" whose screws broke off inside the patient's back after being implanted by a doctor through surgery at a Louisiana hospital, it is error for a Federal District Court to label the doctor and the hospital as indispensable parties, under Rule 19(b) of the Federal Rules of Civil Procedure, and to dismiss the suit against the corporation with prejudice for failure to join the doctor and the hospital—even though the patient, at the conclusion of a state administrative proceeding against the doctor and the hospital for alleged malpractice and negligence, has filed another suit against the doctor and the hospital in Louisiana state court—because (1) the doctor and the hospital, as potential joint tortfeasors, are merely permissive parties, under Rule 19(a) of the Federal Rules, where (a) it has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit, (b) nothing in the 1966 revision of Rule 19 changed that principle, and (c) there is nothing in Louisiana tort law to the contrary, and (2) thus, no inquiry under Rule 19(b) is necessary, for the threshold requirements of Rule 19(a) have not been satisfied; a Federal Court of Appeals, on appeal, errs by failing to hold that the District Court abused its discretion in making such joinder and dismissal rulings; under such circumstances, the United States Supreme Court will grant the patient's petition for certiorari, reverse the judgment of the Court of Appeals, and remand the case for further proceedings.

OPINION OF THE COURT

[498 US 5]

Per Curiam.

Petitioner Temple, a Mississippi resident, underwent surgery in October 1986 in which a "plate and screw device" was implanted in his lower spine. The device was manufactured by respondent Synthes, Ltd. (USA) (Synthes), a Pennsylvania corporation. Dr. S. Henry LaRocca performed the surgery at St. Charles General Hospital in New Orleans,

[498 US 6]

Louisiana. Following surgery, the device's screws broke off inside Temple's back.

Temple filed suit against Synthes in the United States District Court for the Eastern District of Louisiana. The suit, which rested on diversity jurisdiction, alleged defective design and manufacture of the device. At the same time, Temple filed a state administrative proceeding against Dr. LaRocca and the hospital for malpractice and negligence. At the conclusion of the administrative proceeding, Temple filed suit against the doctor and the hospital in Louisiana state court.

Synthes did not attempt to bring

the doctor and the hospital into the federal action by means of a third-party complaint, as provided in Federal Rule of Civil Procedure 14(a). Instead, Synthes filed a motion to dismiss Temple's federal suit for failure to join necessary parties pursuant to Federal Rule of Civil Procedure 19. Following a hearing, the District Court ordered Temple to join the doctor and the hospital as defendants within 20 days or risk dismissal of the lawsuit. According to the court, the most significant reason for requiring joinder was the interest of judicial economy. App to Pet for Cert A-12. The court relied on this Court's decision in Provident Tradesmens Bank & Trust Co. v Patterson, 390 US 102, 19 L Ed 2d 936, 88 S Ct 733 (1968), wherein we recognized that one focus of Rule 19 is "the interest of the courts and the public in complete, consistent, and efficient settlement of controversies." Id., at 111, 19 L Ed 2d 936, 88 S Ct 733. When Temple failed to join the doctor and the hospital, the court dismissed the suit with prejudice.

Temple appealed, and the United States Court of Appeals for the Fifth Circuit affirmed. 898 F2d 152 (1990) (judgt order). The court deemed it "obviously prejudicial to the defendants to have the separate litigations being carried on," because Synthes' defense might be that the plate was not defective but that the doctor and the hospital were negligent, while the doctor and the hospital, on the other hand, might claim that they were not negligent but that the plate was defective.

[498 US 7]

App to Pet for Cert A-3. The Court of Appeals found that the claims overlapped and that the District Court therefore had not abused its discretion in ordering joinder under Rule 19. A petition for rehearing was denied.

In his petition for certiorari to this Court, Temple contends that it was error to label joint tortfeasors as indispensable parties under Rule 19(b) and to dismiss the lawsuit with prejudice for failure to join those parties. We agree. Synthes does not deny that it, the doctor, and the hospital are potential joint tortfeasors. It has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit. See Lawlor v National Screen Service Corp., 349 US 322, 329-330, 99 L Ed 1122, 75 S Ct 865 (1955); Bigelow v Old Dominion Copper Mining & Smelting Co., 225 US 111, 132, 56 L Ed 1009, 32 S Ct 641 (1912). See also Nottingham v General American Communications Corp, 811 F2d 873, 880 (CA5) (per curiam), cert denied, 484 US 854, 98 L Ed 2d 113, 108 S Ct 158 (1987). Nothing in the 1966 revision of Rule 19 changed that principle. See Provident Bank, supra, at 116-117, n 12, 19 L Ed 2d 936, 88 S Ct 733. The Advisory Committee Notes to Rule 19(a) explicitly state that "a tortfeasor with the usual 'joint-and-several' liability is merely a permissive party to an action against another with like liability." 28 USC App, p 595 [USCS Court Rules, Fed Rules of Civ Proc, Notes following Rule 19]. There is nothing in Louisiana tort law to the contrary. See Mullin v Skains, 252 La 1009, 1014, 215 So 2d 643, 645 (1968); La Civ Code Ann, Arts 1794, 1795 (West 1987).

The opinion in Provident Bank, supra, does speak of the public interest in limiting multiple litigation, but that case is not controlling here. There, the estate of a tort victim brought a declaratory judgment action against an insurance company. We assumed that the policyholder was a person "who, under § (a), should be 'joined if feasible.'" 390 US, at 108, 19 L Ed 2d 936, 88 S Ct 733, and went on to discuss the appropriate analysis under Rule 19(b), because the policyholder could not be joined without destroying diversity. Id., at 109-116, 19 L Ed 2d 936, 88 S Ct 733. After examining the factors set forth in Rule 19(b), we determined that the

action could proceed without the policyholder; he therefore was not an indispensable party whose absence required dismissal of the suit. Id., at 116, 119, 19 L Ed 2d 936, 88 S Ct 733.

Here, no inquiry under Rule 19(b) is necessary, because the threshold requirements of Rule 19(a) have not been satisfied. As potential joint tortfeasors with Synthes, Dr. LaRocca and the hospital were merely permissive parties. The Court of Appeals erred by failing to hold that the District Court abused its discretion in ordering them joined as defendants and in dismissing the action when Temple failed to comply with the court's order. For these reasons, we grant the petition for certiorari, reverse the judgment of the Court of Appeals for the Fifth Circuit, and remand for further proceedings consistent with this opinion.

It is so ordered.

[498 US 9]

UNITED STATES OF AMERICA, Plaintiff

v

STATE OF LOUISIANA, et al. (ALABAMA AND MISSISSIPPI BOUNDARY CASE)

498 US 9, 112 L Ed 2d 269, 111 S Ct 377

ON BILL OF COMPLAINT

[No. 9, Orig.]

Decided November 5, 1990.

[498 US 9]

The Additional Supplemental Report of the Special Master, dated October 1, 1990, is received and ordered filed. The recommended Supplemental Decree is approved.

SUPPLEMENTAL DECREE

By its decision of February 26, 1985, the Court overruled the exception of the United States to the Report of its Special Master herein insofar as it challenged the Master's determination that the whole Mississippi Sound constitutes historic inland waters, and, to this extent, adopted the Master's recommendations and confirmed his Report.

On March 1, 1988, the Court resolved the disagreement between the United States and Mississippi as to that portion of the Mississippi coastline at issue in the above-captioned litigation and directed the parties to submit to the Special Master a proposed appropriate decree defining the claims of Alabama and Mississippi with respect to Mississippi Sound. The parties have agreed on and submitted to the Special Master a proposed decree in accordance with the Court's decision of March 1, 1988.

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. For the purposes of the Court's Decree herein dated December 12, 1960, 364 US 502, 5 L Ed 2d 247, 81 S Ct 258 (defining the boundary line [498 US 10] between the submerged lands of the United States and the submerged lands of the States bordering the Gulf of Mexico), the coastline of the States of Alabama and

Mississippi shall be determined on the basis that the whole of Mississippi Sound constitutes state inland waters;

2. For the purposes of said Decree of December 12, 1960, the coastline of Alabama includes a straight line from a point on the western tip of Dauphin Island where $X = 238690$ and $Y = 84050$ in the Alabama plane coordinate system, west zone, and $X = 659783.79$ and $Y = 204674.56$ in the Mississippi plane coordinate system, east zone, to a point on the eastern tip of Petit Bois Island where $X = 215985$ and $Y = 77920$ in the Alabama plane coordinate system, west zone, and $X = 637152.89$ and $Y = 198279.25$ in the Mississippi plane coordinate system, east zone, so far as said line lies on the Alabama side of the Alabama-Mississippi boundary.

3. For the purposes of said Decree of December 12, 1960, the coastline of Mississippi includes the following:

(a) That portion of the straight line described in paragraph 2, above, lying on the Mississippi side of Alabama-Mississippi boundary;

(b) The baseline delimiting Petit Bois Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD. X	N. COORD. Y
A POINT AT	636103.06	197409.43
A POINT AT	635730.88	197167.57
A POINT AT	635197.10	196848.81
A POINT AT	634824.92	196606.95
A POINT AT	634494.81	196403.07
A LINE FROM	634116.89	196223.65
THROUGH	633487.70	195977.80
THROUGH	632600.10	195607.60
THROUGH	631541.99	195143.47
THROUGH	630508.20	194904.30
THROUGH	629479.90	194591.90
THROUGH	628525.00	194321.70
THROUGH	628401.73	194306.69
THROUGH	628036.92	194289.93
THROUGH	627476.60	194182.00
THROUGH	626488.60	193948.10
THROUGH	625932.59	193802.79
THROUGH	625516.00	193766.90
THROUGH	623861.36	193478.53
THROUGH	622820.50	193454.10
THROUGH	621823.80	193356.00
THROUGH	620825.20	193257.90
THROUGH	619847.89	193131.55
THROUGH	618538.77	193268.72
THROUGH	617735.69	193531.82
THROUGH	616497.05	194054.83
THROUGH	615577.50	194348.40
THROUGH	614799.01	194527.45
THROUGH	613600.50	194763.40
THROUGH	612681.90	194895.50
THROUGH	611818.33	195012.55
THROUGH	611021.34	195183.22
THROUGH	610184.77	195530.92
THROUGH	609391.80	195685.30
THROUGH	608419.90	195927.80
THROUGH	607720.29	196127.06
THROUGH	607475.00	196239.30
THROUGH	606247.30	196809.81
THROUGH	605675.10	197160.10
THROUGH	604270.15	197849.15
THROUGH	603527.87	198470.45
TO	603006.58	199221.84;

[498 US 11]

[498 US 12]

(c) A straight line from a point on the western tip of Petit Bois Island from $X = 602984.74$ and $Y = 199379.08$ in the Mississippi plane coordinate system, east zone, to a point on the eastern tip of Horn Island where $X = 586698.88$ and $Y = 203743.22$ in the same coordinate system;

(d) The baseline delimiting Horn Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD. X	N. COORD. Y
A POINT AT	586085.00	203413.20
A POINT AT	585408.00	202870.40
ALINEFROM	584539.17	202442.95
THROUGH	583521.30	202226.50
THROUGH	582523.70	201911.10

THROUGH	581217.11	201559.05
THROUGH	580172.00	201476.80
THROUGH	578707.40	201327.16
THROUGH	577716.60	201360.70
THROUGH	576762.47	201326.88
THROUGH	575057.04	201581.88
THROUGH	573405.12	201965.02
THROUGH	571199.22	202261.66
THROUGH	570919.81	202425.88
THROUGH	568628.38	202769.01
THROUGH	566917.90	203142.60
THROUGH	564973.10	203501.30
THROUGH	563121.32	203819.44
THROUGH	560958.00	204028.60
THROUGH	558940.70	204238.50
THROUGH	557048.68	204283.26
THROUGH	554930.20	204403.10
TO	553435.61	204348.41
A LINE FROM	551970.97	204538.74
THROUGH	551379.95	204841.79

[498 US 13]

THROUGH	550663.93	205145.88
THROUGH	549562.53	205270.46
THROUGH	547945.52	205663.99
THROUGH	546875.90	206276.41
THROUGH	545696.10	206670.80
THROUGH	544396.00	207134.79
THROUGH	542861.16	207556.77
THROUGH	540851.48	208393.15
THROUGH	539596.30	208786.30
TO	538818.50	209086.77
A LINE FROM	536831.40	209354.10
THROUGH	535469.11	209055.01
THROUGH	533599.69	208590.63
THROUGH	532440.54	208312.06
THROUGH	530361.80	207949.10
THROUGH	528785.77	207676.76
THROUGH	527430.00	207570.30
THROUGH	526475.92	207467.20
THROUGH	525672.63	207540.27
THROUGH	522928.20	208196.10
THROUGH	521336.78	208496.86
THROUGH	520062.60	208576.80
THROUGH	519137.96	208626.07
TO	518074.58	209136.06;

(e) A straight line from a point on the western tip of Horn Island where X = 517785.04 and Y = 209525.13 in the same coordinate system to a point on the eastern tip of the most easterly segment of Ship Island where X = 486293.70 and = 208216.03 in the same co-ordinate system;

(f) The baseline delimiting the most easterly segment of Ship Island determined by the following points in the Mississippi plane coordinate system, east zone:

[498 US 14]

	E. COORD. X	N. COORD. Y
A LINE FROM	485802.92	207647.85
THROUGH	484179.80	206426.60
THROUGH	482568.66	205272.72
THROUGH	480844.60	204246.60
THROUGH	479440.58	203436.29
THROUGH	478229.70	202788.30
THROUGH	476458.71	201921.54
THROUGH	475542.00	201634.30
TO	475218.46	201529.55;

(g) A straight line from a point on the western tip of the easterly segment of Ship Island where X = 474673.81 and Y = 201505.68 in the same coordinate system to a point on the eastern end of the westerly segment of Ship Island where X = 469644.55 and Y = 200646.86 in the same coordinate system;

(h) The baseline delimiting the most westerly segment of Ship Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD. X	N. COORD. Y
A LINE FROM	468942.08	200226.18
THROUGH	468023.27	199707.98
THROUGH	466932.10	198967.80
THROUGH	465591.05	198219.69
THROUGH	464163.11	197420.58
TO	463004.481	196885.896;

(4) That portion of the Mississippi baseline west of the westerly segment of Ship Island determined above is the subject of a separate decree resolving Mississippi v United States, 498 US 16, 112 L Ed 2d 273, 111 S Ct 380.

(5) The baseline described in Paragraphs 2 and 3 above shall be, pursuant to stipulation of the parties, fixed as of the date of this decree, and shall from that date no longer be ambulatory.

[498 US 15]

(6) The parties shall bear their own costs of these proceedings; the actual expenses of the Special Master herein and the compensation due him shall be borne half by the United States and half by Mississippi.

(7) After his final accounting has been approved and any balance due him has been paid, the Special Master shall be deemed discharged with the thanks of the Court.

(8) The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement the decree and the rights of the respective parties.

Justice **Marshall** took no part in the consideration or formulation of this Supplemental Decree.

[498 US 16]

STATE OF MISSISSIPPI, Plaintiff

v

UNITED STATES

498 US 16, 112 L Ed 2d 273, 111 S Ct 380

ON BILL OF COMPLAINT

[No. 113, Orig.]

Decided November 5, 1990.

[498 US 16]

The Report of the Special Master is received and ordered filed. The recommended Decree is approved.

DECREE

On March 1, 1988, this Court granted leave to the State of Mississippi and the United States to file a complaint with the Court setting forth their respective claims to "any undecided portion of Chandeleur Sound." United States v Louisiana et al. (Alabama and Mississippi Boundary case), 485 US 88, 99 L Ed 2d 83, 108 S Ct 901 (1988). Thereafter, the State of Mississippi filed the above-captioned litigation which was timely answered by the United States.

Pursuant to a stipulation executed by the parties in resolution of the above-styled action, and solely for the purpose of determining the parties' respective rights under the Submerged Lands Act, 43 USC 1301 et seq. [43 USCS §§ 1301 et seq.], in the vicinity of Chandeleur Sound, the parties have agreed to a line which shall permanently mark the base line from which Mississippi's Submerged Lands Act grant is measured. That line is described in Paragraph 3 below. Accordingly, the parties' joint motion for entry of decree is granted.

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. As against the plaintiff State of Mississippi and all persons claiming under it, the United States has exclusive rights to explore the area of the Continental Shelf reserved to the United States by the Submerged Lands Act, 43 USC 1302 [43 USCS § 1302], and to exploit the natural resources of said area and the State of Mississippi is not entitled to any interest in such

[498 US 17]

lands, minerals, and resources and said State, its privies, assigns, lessees and other persons claiming under it are hereby enjoined from interfering with the rights of the United States in such lands, minerals and resources. Solely for the purpose of determining each party's rights under the Submerged Lands Act, the line described in Paragraph 3 hereof is stipulated by the parties to henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is measured.

2. As against the defendant United States and all persons claiming under it, the State of Mississippi has exclusive rights to explore the area of the Continental Shelf as provided by the Submerged Lands Act and to exploit the natural resources of said area, with the exceptions provided by Section 5 of the Submerged Lands Act, 67 Stat 32, 43 USC § 1313 [43 USCS § 1313]. The United States is not entitled to any interest in such lands, minerals, and resources and the United States, its privies, assigns, lessees and other persons claiming under it are hereby enjoined from interfering with the rights of the State of Mississippi in such lands, minerals and resources. Solely for the purpose of determining each party's respective rights under the Submerged Lands Act, the line described in Paragraph 3 hereof is stipulated by the parties to henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is measured.

3. Solely for the purpose of determining each party's respective rights under the Submerged Lands Act and in resolution of the above-captioned litigation, the following line is stipulated by the parties to henceforth represent and permanently mark the line from which Mississippi's Submerged Lands Act grant is measured:

A straight line from a point on the southern shore of the most westerly segment of Ship Island where X = 463004.481 and Y = 196885.896 in the Mississippi plane coordinate system, east zone, and X = 2752646.58 and Y = 568331.88 in the Louisiana plane coordinate system,

south zone, to a point near the northern tip of the most northerly of the Chandeleur Islands where X = 2775787 and Y = 513796 in the Louisiana plane coordinate system, south zone, so far as said line lies on the Mississippi side of the Mississippi-Louisiana boundary.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to its previous orders or decrees herein or to this Decree or to effectuate the rights of the parties in the premises.

5. Nothing in this Decree or in the proceedings leading to it shall prejudice any rights, claims or defenses of the State of Mississippi as to its maritime lateral boundaries with the State of Louisiana, which boundary is not at issue in this litigation. Nor shall the United States in any way be prejudiced hereby as to such matters. Nothing in this decree shall prejudice any rights, claims or defenses of the United States or the State of Mississippi as to the inland water status of Chandeleur Sound. Nor shall anything in this Decree prejudice or modify the rights and obligations under any contracts or agreements, not inconsistent with this Decree, between the parties or between a party and a third party.

[498 US 19]

MERCEDEL W. MILES, individually and as administratrix of the succession of LUDWICK ADAM TORREGANO, Petitioner

v

APEX MARINE CORPORATION et al.

498 US 19, 112 L Ed 2d 275, 111 S Ct 317

[No. 89-1158]

Argued October 3, 1990. Decided November 6, 1990.

Decision: In general maritime action for seaman's wrongful death, damages held not available for loss of society or for seaman's lost future earnings.

SUMMARY

A seaman's mother, as administratrix of the estate of the seaman, who died as a result of being stabbed by a fellow crew member aboard a ship in the Vancouver, Washington harbor, brought an action in United States District Court for the Eastern District of Louisiana against the ship's operators, charterer, and owner, alleging (1) negligence under the Jones Act (46 USCS Appx § 688)—which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment—for failure to prevent the stabbing, and (2) breach of the warranty of seaworthiness, under general maritime law, for hiring an unfit crew member. After ruling that the estate could not recover the seaman's lost future income, the District Court entered judgment on a jury verdict that, based on a finding that one of the ship's operators had been negligent but that the ship was seaworthy, awarded damages on the negligence claim for the mother's loss of the seaman's support and services and for the seaman's pain and suffering. The United States Court of Appeals for the Fifth Circuit affirmed the judgment as to the negligence finding, reversed the judgment as to the finding that the ship was seaworthy, and remanded the case (882 F2d 976). Besides holding that the ship was unseaworthy as a matter of law, which holding revived the mother's general maritime claim, the Court of Appeals held that (1) a nondependent parent may not recover for loss of society in a general maritime wrongful death action, and (2) general maritime law does not permit a survival action for a decedent's lost future earnings.

Briefs of Counsel, p 1221, infra.

On certiorari, the United States Supreme Court affirmed the Court of Appeals' judgment. In an opinion by O'Connor, J., expressing the unanimous view of the eight participating members of the court, it was held that (1) there is a general maritime cause of action for the wrongful death of a seaman because (a) the Jones Act evinces no general hostility to recovery under maritime law, since the Jones Act does not disturb seamen's general maritime claims for injuries resulting from unseaworthiness or preclude the recovery for wrongful death due to unseaworthiness created by the Death on the High Seas Act (DOHSA) (46 USCS Appx §§ 761 et seq.), which authorizes a decedent's personal representative to maintain an action for wrongful death occurring on the high seas, (b) the extension of the DOHSA wrongful death action to territorial waters furthers uniformity in the exercise of admiralty jurisdiction, and (c) an earlier decision by the Supreme Court allowing a wrongful death action sounding in unseaworthiness for the death of a longshoreman in state territorial waters was intended to create a general maritime wrongful death action applicable beyond the situation of longshoremen; (2) damages recoverable in a general maritime cause of action for the wrongful death of a seaman do not include damages for loss of society because (a) both the Jones Act and the DOHSA preclude recovery for nonpecuniary loss, such as loss of society, in a general maritime action, and (b) the Supreme Court's holding, in an earlier decision, that damages for loss of society can be recovered in a general maritime action for wrongful death applies to only longshoremen and in only territorial waters; and (3) in a general maritime action surviving the death of a seaman, the estate cannot recover the decedent's lost future earnings because (a) it is the considered judgment of a large majority of American legislatures that lost future income is not recoverable in a survival action, and (b) the fact that recovery in a survival action under the Jones Act is limited to losses suffered during the decedent's lifetime forecloses more expansive remedies in a general maritime action founded, under the theory of the unseaworthiness of a vessel, on strict liability.

Souter, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

2 Am Jur 2d, Admiralty §§ 127-132; 22A Am Jur 2d, Death §§ 246, 247, 252; 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 48, 81; 70 Am Jur 2d, Shipping §§ 438, 451, 472, 478

11 Federal Procedure, L Ed, Employers' Liability Acts §§ 30:94, 30:106; 23 Federal Procedure, L Ed, Maritime Law and Procedure §§ 53:280-53:282

9 Federal Procedural Forms, L Ed, Employers' Liability Acts §§ 27:96-27:111

11 Am Jur Pl & Pr Forms (Rev), Federal Employers' Liability and Compensation Acts, Forms 151, 166-170

8 Am Jur Legal Forms 2d, Federal Employers' Liability and Compensation Acts § 110:45

4 Am Jur Proof of Facts 71, Death, Actions for

11 Am Jur Trials 1, Representation of Survivors in Death Actions; 12 Am Jur Trials 317, Wrongful Death Actions

46 USCS Appx §§ 688, 761, 762

US L Ed Digest, Damages §§ 103, 104; Death § 2

Index to Annotations, Admiralty; Death and Death Actions; Death on the High Seas Act; Jones Act; Seamen; Seaworthiness

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Propriety of nonpecuniary damages award in action joining Jones Act (46 USCS § 688) claim with general maritime claim, where cause of action arose on territorial or inland waters. 53 ALR Fed 635.

Measure and elements of damages in action for wrongful death under general maritime law. 18 ALR Fed 184.

Death on the High Seas Act: Right to recover for death of seaman as affected by Jones Act. 22 ALR3d 852.

Liability under Jones Act or seaworthiness doctrine for injuries caused by assault. 22 ALR3d 624.

For whose benefit a survival action under the Federal Employers' Liability Act, or the Jones Act, may be prosecuted. 94 ALR2d 910.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Damages § 103; Federal Employers' Liability and Compensation Acts § 64 — seaman's wrongful death — loss of society — effect of federal statutes

1a-1f. Damages recoverable in a general maritime cause of action for the wrongful death of a seaman do not include damages for loss of society because (1) by explicitly limiting, in 46 USCS Appx § 762, recoverable damages to pecuniary loss in an action brought under the Death on the High Seas Act (DOHSA) (46 USCS Appx §§ 761 et seq.)—which authorizes a decedent's personal representative to maintain an action for wrongful death occurring on the high seas—the DOHSA forecloses recovery for nonpecuniary loss, such as loss of society, in a general maritime action, (2) the Supreme Court's holding, in an earlier decision, that damages for loss of society can be recovered in a maritime wrongful death action applies to only longshoremen and in only territorial waters, (3) the Jones Act (46 USCS Appx § 688)—which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment—applies when a seaman has been killed as a result of negligence, limits recovery to pecuniary loss, so as to preclude recovery for loss of society, and also precludes recovery for loss of society in a general maritime action for the death of a seaman as a result of the unseaworthiness of a ship, since it would be inconsistent with the Supreme Court's place in the constitutional scheme were the court to sanction more expansive remedies in a judicially created cause of action in which liability, under the theory of unseaworthiness, is without fault than Congress has allowed in cases of death resulting from negligence, and (4) by holding that there is no recovery for loss of society in a general maritime action for the wrongful death of a seaman, the Supreme Court restores a uniform rule applicable to all actions for the wrongful death of a seaman, whether under the DOHSA, the Jones Act, or general maritime law.

Damages § 104 — seaman's death — survival action — lost future earnings — effect of state and federal statutes

2a-2e. In a general maritime action surviving the death of a seaman, the estate cannot recover the decedent's lost future earnings because the Supreme Court will not create, under the court's admiralty power, a remedy that is disfavored by the states and goes well beyond the limits of Congress' ordered system of recovery for a seaman's injury and death, given (1) the considered judgment of a large majority of American legislatures that lost future income is not recoverable in a survival action, and (2) the fact that recovery in a survival action under the Jones Act (46 USCS Appx § 688) —which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment—is limited to losses suffered during the decedent's lifetime forecloses more expansive remedies in a general maritime action founded, under the theory of the unseaworthiness of a vessel, on strict liability, where the Supreme Court is not free to exceed the limits placed by Congress on recovery in an action surviving the death of a seaman simply because such an expansion of remedies might work to the benefit of seamen and those dependent upon them.

Admiralty §§ 76, 77; Common Law § 1; Death § 2 — maritime wrongful death action — effect of state and federal statutes

3. The unanimous legislative judgment behind (1) the Jones Act (46 USCS Appx § 688), which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment, (2) the Death on the High Seas Act (DOHSA) (46 USCS Appx §§ 761 et seq.), which authorizes a decedent's personal representative to maintain an action for wrongful death occurring on the high seas, and (3) the wrongful death statutes enacted by every state in the Union, creates a strong presumption in favor of a general maritime wrongful death action because (1) the state and federal statutes establish an unambiguous policy in abrogation of the principle that maritime law does not afford a cause of action for wrongful death, (2) such a policy is to be given its appropriate weight in matters of not only statutory construction, but also decisional law, and (3) legislation has always served as an important source of both common-law and admiralty principles.

Admiralty § 76; Statutes § 100 — legislative policy — limits on application by court

4. In applying the legislative policy created by a statute, an admiralty court is not free to go beyond the limits imposed by the legislature that enacted the statute, because (1) the legislature does not merely enact general policies, but, by the terms of a statute, also indicates the legislature's conception of the sphere within which the policy underlying the statute is to have effect, and (2) Congress, in the exercise of its legislative powers, is free to say "this much and no more."

Admiralty § 76; Death §§ 2, 4 — maritime wrongful death action — effect of federal statutes

5a-5c. Nothing in the Death on the High Seas Act (DOHSA) (46 USCS Appx §§ 761 et seq.)—which authorizes a decedent's personal representative to maintain an action for wrongful death occurring on the high seas—or the Jones Act (46 USCS Appx § 688)—which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment—can be read to preclude the United States Supreme Court from exercising its admiralty power to remedy nonuniformities in maritime wrongful death law, which nonuniformities could not have been anticipated when those statutes were passed, and which nonuniformities consisted of the facts that (1) in territorial waters, maritime law allowed a remedy for unseaworthiness resulting in injury, but not for death, (2) the DOHSA allowed a remedy for death resulting from unseaworthiness on the high seas, but general maritime law did not allow such recovery for a similar death in territorial waters, and (3) in those states whose statutes allow a claim for wrongful death resulting from unseaworthiness, recovery was available for the death of a longshoreman due to unseaworthiness, but not for the death of a Jones Act seaman; the Supreme Court's creation of a general maritime wrongful death action applicable in all waters not only is consistent with the general policy of both the DOHSA and the Jones Act favoring wrongful death recovery, but also effectuates the constitutionally based principle that federal admiralty law should be a system of law coextensive with, and operating uniformly in, the whole country.

Federal Employers' Liability and Compensation Acts § 64; States, Territories, and Possessions § 46 — Jones Act — pre-emption of state remedies

6. Under the Jones Act (46 USCS Appx § 688), which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment, wrongful death actions are limited to negligence; the Jones Act pre-empts state-law remedies for the death or injury of a seaman.

Admiralty §§ 76, 77 — seamen's injury or death — effect of federal and state statutes

7. Although an admiralty court may supplement statutory remedies for the injury to or death of a seaman, when doing so would achieve the uniform vindication of the policies embodied in the statutes consistent with the court's constitutional mandate, the court must also keep strictly within the limits imposed by Congress under the statutes, where Congress and the states have legislated extensively to provide substantive legal protection from the injury to or death of a seaman, because (1) an admiralty court should look primarily to these legislative enactments for policy guidance, and (2) Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation.

Death §§ 2, 4; Federal Employers' Liability and Compensation Acts § 63 — seaman's wrongful death — general maritime action — effect of federal statutes

8a, 8b. There is a general maritime cause of action for the wrongful death of a seaman because (1) the Jones Act (46 USCS Appx § 688)—which authorizes a deceased seaman's personal representative to maintain an action for the seaman's death as a result of personal injury in the course of employment—evinces no general hostility to recovery under maritime law, since the Jones Act does not (a) disturb seamen's general maritime claims for injuries resulting from unseaworthiness, or (b) preclude the recovery for wrongful death due to unseaworthiness created by its companion statute, the Death on the High Seas Act (DOHSA) (46 USCS Appx §§ 761 et seq.), which authorizes a decedent's personal representative to maintain an action for wrongful death occurring on the high seas; (2) the extension of the DOHSA wrongful death action to territorial waters furthers uniformity in the exercise of admiralty jurisdiction; and (3) there is little question that an earlier decision by the Supreme Court allowing a wrongful death action sounding in unseaworthiness for the death of a longshoreman in state territorial waters was intended to create a general maritime wrongful death action applicable beyond the situation of longshoremen, since (a) the earlier decision explicitly overruled an even earlier Supreme Court decision that had involved a true seaman and had held that maritime law does not afford a cause of action for wrongful death, (b) all three anomalies identified in the overruling decision as resulting from nonuniformity in maritime law involve seamen, and (c) the anomaly referred to in the overruling decision as the strangest anomaly—that recovery is available for the wrongful death in territorial waters of a longshoreman, but not a true seaman—can be remedied only if a general maritime wrongful death action is extended to seamen.

Courts § 92.3 — relation to legislature

9. When Congress speaks directly to a question, courts are not free to supplement Congress' answer so thoroughly that the statute directed to the question becomes meaningless.

Evidence § 147 — presumption — knowledge of law

10. In construing a statute, the United States Supreme Court assumes that Congress is aware of existing law when it passes legislation.

Abatement §§ 7, 9 — death of party — seaman — common law

11a, 11b. Although the Jones Act (46 USCS Appx § 688) provides that a seaman's right of action for injuries due to negligence survives to the seaman's personal representative, and although most states have survival statutes applicable to tort actions generally, there is, absent a change in the traditional maritime rule, no survival of unseaworthiness claims where these state statutes do not apply or there is no state survival statute, because under traditional maritime law, as under common law, there is no right of survival, and thus a seaman's personal cause of action does not survive the seaman's death.

Abatement § 9 — Jones Act — death of seaman

12a, 12b. The survival provision of the Jones Act (46 USCS Appx § 688), which authorizes an action to be maintained for a seaman's personal injuries occurring in the course of employment, and which incorporates the survival provisions of the Federal Employers' Liability Act (45 USCS §§ 51 et seq.), limits recovery under the Act to losses suffered during the decedent's lifetime.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Miles, the mother and administratrix of the estate of a seaman killed by a fellow crew member aboard the vessel of respondents (collectively Apex) docked in an American port, sued Apex in District Court, alleging negligence under the Jones Act for failure to prevent the assault, and breach of the warranty of seaworthiness under general maritime law for hiring a crew member unfit to serve. After the court ruled, inter alia, that the estate could not recover the son's lost future income, the jury found that the ship was seaworthy, but that Apex was negligent. Although it awarded damages on the negligence claim to Miles for the loss of her son's support and services and to the estate for pain and suffering, the jury found that Miles was not financially dependent on her son and was therefore not entitled to damages for loss of society. The Court of Appeals affirmed the judgment of negligence by Apex. As to the general maritime claim, the court ruled that the vessel was unseaworthy as a matter of law, but held that a nondependent parent may not recover for loss of society in a general maritime wrongful death action and that general maritime law does not permit a survival action for decedent's lost future earnings.

Held:

1. There is a general maritime cause of action for the wrongful death of a seaman. The reasoning of Moragne v States Marine Lines, Inc., 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772, which created a general maritime wrongful death cause of action, extends to suits for the death of true seamen despite the fact that Moragne involved a longshoreman. Although true seamen, unlike longshoremen, are covered under the Jones Act provision creating a negligence cause of action against the seaman's employer for wrongful death, Moragne, supra, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772, recognized that that provision is preclusive only of state remedies for death from unseaworthiness and does not pre-empt a general maritime wrongful death action. The Jones Act evinces no general hostility to recovery under maritime law, since it does not disturb seamen's general maritime claims for injuries resulting from unseaworthiness, and does not preclude the recovery for wrongful death due to unseaworthiness created by its companion statute, the Death on the High Seas Act (DOHSA). Rather, the Jones Act establishes a uniform system of seamen's tort law. As the Court concluded in Moragne, supra, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772, that case's extension of the DOHSA wrongful death action from the high seas to territorial waters furthers, rather than hinders, uniformity in the exercise of admiralty jurisdiction. There is also little question that Moragne intended to create a general maritime wrongful death action applicable beyond the situation of longshoremen, since it expressly overruled The Harrisburg, 119 US 199, 30 L Ed 358, 7 S Ct 140, which held that maritime law did not afford a cause of action for the wrongful death of a seaman, and since each of the "anomalies" to which the Moragne cause of action was directed—particularly the fact that recovery was theretofore available for the wrongful death in territorial waters of a longshoreman, but not a true seaman—involved seamen.

2. Damages recoverable in a general maritime cause of action for the wrongful death of a seaman do not include loss of society. This case is controlled by the logic of Mobil Oil Corp. v Higginbotham, 436 US 618, 625, 56 L Ed 2d 581, 98 S Ct 2010, which held that recovery for nonpecuniary loss, such as loss of society, is foreclosed in a general maritime action for death on the high seas because DOHSA, by its terms, limits recoverable damages in suits for wrongful death on the high seas to "*pecuniary* loss sustained by the persons for whose benefit the suit is brought" (emphasis added). Sea-Land Services, Inc. v Gaudet, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806, which allowed recovery for loss of society in a general maritime wrongful death action, applies only in territorial waters and only to longshoremen. The Jones Act, which applies to deaths of true seamen as a result of negligence, allows recovery only for pecuniary loss and not for loss of society in a wrongful death action. See Michigan Central R. Co. v Vree-

land, 227 US 59, 69-71, 57 L Ed 417, 33 S Ct 192. The Jones Act also precludes recovery for loss of society in this case involving a general maritime claim for wrongful death resulting from unseaworthiness, since it would be inconsistent with this Court's place in the constitutional scheme to sanction more expansive remedies for the judicially created unseaworthiness cause of action, in which liability is without fault, than Congress has allowed in cases of death resulting from negligence. This holding restores a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

3. A general maritime survival action cannot include recovery for decedent's lost future earnings. Even if a seaman's personal cause of action survives his death under general maritime law, the income he would have earned but for his death is not recoverable because the Jones Act's survival provision limits recovery to losses suffered during the decedent's lifetime. See, e.g., Van Beeck v Sabine Towing Co., 300 US 342, 347, 81 L Ed 685, 57 S Ct 452. Since Congress has limited the survival right for seamen's injuries resulting from negligence, this Court is not free, under its admiralty powers, to exceed those limits by creating more expansive remedies in a general maritime action founded on strict liability.

882 F2d 976, affirmed.

O'Connor, J., delivered the opinion of the Court, in which all other Members joined, except Souter, J., who took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Allain F. Hardin argued the cause for petitioner.
Gerard T. Gelpi argued the cause for respondents.
Briefs of Counsel, p 1221, infra.

OPINION OF THE COURT

[498 US 21]

Justice **O'Connor** delivered the opinion of the Court.

[1a, 2a] We decide whether the parent of a seaman who died from injuries incurred aboard respondents' vessel may recover under general maritime law for loss of society, and whether a claim for the seaman's lost future earnings survives his death.

I

Ludwick Torregano was a seaman aboard the vessel M/V Archon. On the evening of July 18, 1984, Clifford Melrose, a fellow crew member, stabbed Torregano repeatedly, killing him. At the time, the ship was docked in the harbor of Vancouver, Washington.

Mercedel Miles, Torregano's mother and administratrix of his estate, sued Apex Marine Corporation and Westchester Marine Shipping Company, the vessel's operators, Archon Marine Company, the charterer, and Aeron Marine Company, the Archon's owner (collectively Apex), in United States District Court for the Eastern District of Louisiana. Miles alleged negligence under the Jones Act, 41 Stat 1007, as amended, 46 USC App § 688 [46 USCS Appx § 688], for failure to prevent the assault on her son, and breach of the warranty of seaworthiness under general maritime law for hiring a crew member unfit to serve. She sought compensation for loss of support [498 US 22] and services and loss of society resulting from the death of her son, punitive damages, and compensation to the estate for Torregano's pain and suffering prior to his death and for his lost future income.

At trial, the District Court granted Apex's motion to strike the claim for punitive damages, ruled that the estate could not recover Torregano's lost future income, and denied Miles' motion for a directed verdict as to negligence and unseaworthiness. The court instructed the jury that Miles could not recover damages for loss of society if they found that she was not financially dependent on her son.

The jury found that Apex was negligent and that Torregano was 7% contributorily negligent in causing his death, but that the ship was seaworthy. After discounting for Torregano's contributory negligence, the jury awarded Miles $7,254 for the loss of support and services of her son and awarded the estate $130,200 for Torregano's pain and suffering. The jury also found that Miles was not financially dependent on her son and therefore not entitled to damages for loss of society. The District Court denied both parties' motions for judgment notwithstanding the verdict and entered judgment accordingly.

The United States Court of Appeals for the Fifth Circuit affirmed in part, reversed in part, and remanded. 882 F2d 976 (1989). The court affirmed the judgment of negligence on the part of Apex, but held that there was insufficient evidence to support the contributory negligence finding. Id., at 983-985. Miles was therefore entitled to the full measure of $7,800 for loss of support and services, and the estate was entitled to $140,000 for Torregano's pain and suffering. The court also found that Melrose's extraordinarily violent disposition demonstrated that he was unfit and therefore that the Archon was unseaworthy as a matter of law. Id., at 983. Because this ruling revived Miles' general maritime claim, the court considered two questions concerning the scope of damages under general maritime law. The court reaffirmed [498 US 23] its prior decision in Sistrunk v Circle Bar Drilling Co., 770 F2d 455 (CA5 1985), holding that a nondependent parent may not recover for loss of society in a general maritime wrongful death action. 882 F2d, at 989. It also held that general maritime law does not permit a survival action for decedent's lost future earnings. Id., at 987.

We granted Miles' petition for certiorari on these two issues, 494 US 1003, 108 L Ed 2d 472, 110 S Ct 1295 (1990), and now affirm the judgment of the Court of Appeals.

II

We rely primarily on Moragne v States Marine Lines, Inc., 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772 (1970). Edward Moragne was a longshoreman who had been killed aboard a vessel in United States and Florida territorial waters. His widow brought suit against the shipowner, seeking to recover damages for wrongful death due to the unseaworthiness of the ship. The District Court dismissed that portion of the complaint because neither federal nor Florida statutes allowed a wrongful death action sounding in unseaworthiness where death occurred in territorial waters. General maritime law was also no help; in The Harrisburg, 119 US 199, 30 L Ed 358, 7 S Ct 140 (1886), this Court held that maritime law does not afford a cause of action for wrongful death. The Court of Appeals affirmed.

[3] This Court overruled The Harrisburg. After questioning whether The Harrisburg was a proper statement of the law even in 1886, the Court set aside that issue because a "development of major significance ha[d] intervened." Moragne, supra, at 388, 26 L Ed 2d 339, 90 S Ct 1772. Specifically, the state legislatures and Congress had rejected wholesale the rule against wrongful death. Every State in the Union had enacted a wrongful death statute. In 1920, Congress enacted two pieces of legislation creating a wrongful death action for most maritime deaths. The Jones Act, 41 Stat 1007, as amended, 46 USC App § 688 [46 USCS Appx § 688], through incorporation of the Federal Employers' Liability Act (FELA), 35 Stat 65, as amended, 45 USC §§ 51-59 [45 USCS §§ 51-59], created a wrongful death action in favor of the personal

[498 US 24]

representative of a seaman killed in the course of employment. The Death on the High Seas Act (DOHSA), 41 Stat 537, 46 USC App §§ 761, 762 [46 USCS Appx §§ 761, 762], created a similar action for the representative of anyone killed on the high seas.

These statutes established an unambiguous policy in abrogation of those principles that underlay The Harrisburg. Such a policy is "to be given its appropriate weight not only in matters of statutory construction but also in those of decisional law." Moragne, supra, at 391, 26 L Ed 2d 339, 90 S Ct 1772. Admiralty is not created in a vacuum; legislation has always served as an important source of both common law and admiralty principles. 398 US, at 391, 392, 26 L Ed 2d 339, 90 S Ct 1772, citing Landis, Statutes and the Sources of Law, in Harvard Legal Essays 213, 214, 226-227 (R. Pound ed 1934). The unanimous legislative judgment behind the Jones Act, DOHSA, and the many state statutes created a strong presumption in favor of a general maritime wrongful death action.

[4] But legislation sends other signals to which an admiralty court must attend. "The legislature does not, of course, merely enact general policies. By the terms of a statute, it also indicates its conception of the sphere within which the policy is to have effect." Moragne, supra, at 392, 26 L Ed 2d 339, 90 S Ct 1772. Congress, in the exercise of its legislative powers, is free to say "this much and no more." An admiralty court is not free to go beyond those limits. The Jones Act and DOHSA established a policy in favor of maritime wrongful death recovery. The central issue in Moragne was whether the limits of those statutes proscribed a more general maritime cause of action. 398 US, at 393, 26 L Ed 2d 339, 90 S Ct 1772.

The Court found no such proscription. Rather, the unfortunate situation of Moragne's widow had been created by a change in the maritime seascape that Congress could not have anticipated. At the time Congress passed the Jones Act and DOHSA, federal courts uniformly applied state wrongful death statutes for deaths occurring in state territorial waters. Except in those rare cases where state statutes

[498 US 25]

were also intended to apply on the high seas, however, there was no recovery for wrongful death outside territorial waters. See Moragne, supra, at 393, and n 10, 26 L Ed 2d 339, 90 S Ct 1772. DOHSA filled this void, creating a wrongful death action for all persons killed on the high seas, sounding in both negligence and unseaworthiness. Congress did not extend DOHSA to territorial waters because it believed state statutes sufficient in those areas. 398 US, at 397-398, 26 L Ed 2d 339, 90 S Ct 1772.

[5a] And so they were when DOHSA was passed. All state statutes allowed for wrongful death recovery in negligence, and virtually all DOHSA claims sounded in negligence. Unseaworthiness was "an obscure and relatively little used remedy," largely because a shipowner's duty at that time was only to use due diligence to provide a seaworthy ship. See G. Gilmore & C. Black, The Law of Admiralty 383, 375 (2d ed 1975). Thus, although DOHSA permitted actions in both negligence and unseaworthiness, it worked essentially as did state wrongful death statutes. DOHSA created a near uniform system of wrongful death recovery.

"The revolution in the law began with Mahnich v Southern S.S. Co., [321 US 96 [88 L Ed 561, 64 S Ct 455] (1944)]," in which this Court transformed the warranty of seaworthiness into a strict liability obligation. Gilmore & Black, supra, at 384, 386. The shipowner became liable for failure to supply a safe ship irrespective of fault, and irrespective of the intervening negligence of crew members. Mahnich v Southern S.S. Co., 321 US 96, 88 L Ed 561, 64 S Ct 455 (1944) ("[T]he exercise of due diligence does not relieve the owner of his obligation to the seaman to furnish adequate appliances. . . . If the owner is liable for furnishing an unseaworthy appliance, even when he is not negligent, a fortiori his obligation is unaffected by the fact that the negligence of the officers of the vessel contributed to the unseaworthiness"). The Court reaffirmed the rule two years later in Seas Shipping Co. v Sieracki, 328 US 85, 94-95, 90 L Ed 1099, 66 S Ct 872 (1946) ("[Unseaworthiness] is essentially a species of liability without fault"). As a consequence of this radical change, unseaworthiness

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"[became] the principal vehicle for recovery by seamen for injury or death." Moragne, 398 US, at 399, 26 L Ed 2d 339, 90 S Ct 1772. DOHSA claims now sounded largely in unseaworthiness. "The resulting discrepancy between the remedies for deaths covered by [DOHSA] and for deaths that happen to fall within a state wrongful-death statute not encompassing unseaworthiness could not have been foreseen by Congress." Ibid.

[5b, 6] The emergence of unseaworthiness as a widely used theory of liability made manifest certain anomalies in maritime law that had not previously caused great hardship. First, in territorial waters, general maritime law allowed a remedy for unseaworthiness resulting in injury, but not for death. Second, DOHSA allowed a remedy for death resulting from unseaworthiness on the high seas, but general maritime law did not allow such recovery for a similar death in territorial waters. Finally, in what Moragne called the "strangest" anomaly, in those States whose statutes allowed a claim for wrongful death resulting from unseaworthiness, recovery was available for the death of a longshoreman due to unseaworthiness, but not for the death of a Jones Act seaman. See

Moragne, supra, at 395-396, 26 L Ed 2d 339, 90 S Ct 1772. This was because wrongful death actions under the Jones Act are limited to negligence, and the Jones Act pre-empts state law remedies for the death or injury of a seaman. See Gillespie v United States Steel Corp. 379 US 148, 154-156, 13 L Ed 2d 199, 85 S Ct 308 (1964).

[5c] The United States, as amicus curiae, urged the Moragne Court to eliminate these inconsistencies and render maritime wrongful death law uniform by creating a general maritime wrongful death action applicable in all waters. The territorial limitations placed on wrongful death actions by DOHSA did not bar such a solution. DOHSA was itself a manifestation of congressional intent "to achieve 'uniformity in the exercise of admiralty jurisdiction.'" Moragne, supra, at 401, 26 L Ed 2d 339, 90 S Ct 1772, quoting Gillespie, supra, at 155, 13 L Ed 2d 199, 85 S Ct 308. Nothing in that Act or in the Jones Act could be read to preclude this Court from exercising

[498 US 27]

its admiralty power to remedy nonuniformities that could not have been anticipated when those statutes were passed. Moragne, supra, at 399-400, 26 L Ed 2d 339, 90 S Ct 1772. The Court therefore overruled The Harrisburg and created a general maritime wrongful death cause of action. This result was not only consistent with the general policy of both 1920 Acts favoring wrongful death recovery, but also effectuated "the constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.'" Moragne, supra, at 402, 26 L Ed 2d 339, 90 S Ct 1772, quoting The Lottawanna, 21 Wall 558, 575, 22 L Ed 654 (1875).

III

[7] We have described Moragne at length because it exemplifies the fundamental principles that guide our decision in this case. We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Apex contends that Moragne's holding, creating a general maritime wrongful death action, does not apply in this case because Moragne was a longshoreman, whereas Torregano was a true seaman. Apex is correct that Moragne does not apply on its facts, but we decline to limit Moragne to its facts.

Historically, a shipowner's duty of seaworthiness under general maritime law ran to seamen in the ship's employ.

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See Sieracki, 328 US, at 90, 90 L Ed 1099, 66 S Ct 872. In Sieracki, we extended that duty to stevedores working aboard ship but employed by an independent contractor. Id., at 95, 90 L Ed 1099, 66 S Ct

872. As this was Moragne's situation, Moragne's widow was able to bring an action for unseaworthiness under general maritime law. In a narrow sense, Moragne extends only to suits upon the death of longshoremen like Moragne, so-called Sieracki seamen. Torregano was a true seaman, employed aboard the Archon. Were we to limit Moragne to its facts, Miles would have no general maritime wrongful death action. Indeed, were we to limit Moragne to its facts, that case would no longer have any applicability at all. In 1972, Congress amended the Longshore and Harbor Workers' Compensation Act (LHWCA), 86 Stat 1251, as amended, 33 USC §§ 901-950 [33 USCS §§ 901-950], to bar any recovery from shipowners for the death or injury of a longshoreman or harbor worker resulting from breach of the duty of seaworthiness. See 33 USC § 905(b) [33 USCS § 905(b)]; American Export Lines, Inc. v Alvez, 446 US 274, 282, n 9, 64 L Ed 2d 284, 100 S Ct 1673 (1980). If Moragne's widow brought her action today, it would be foreclosed by statute.

Apex asks us not to extend Moragne to suits for the death of true seamen. This limitation is warranted, they say, because true seamen, unlike longshoremen, are covered under the Jones Act. The Jones Act provides a cause of action against the seaman's employer for wrongful death resulting from negligence that Apex contends is preclusive of any recovery for death from unseaworthiness. See 46 USC App § 688 [46 USCS Appx § 688].

This Court first addressed the preclusive effect of the Jones Act wrongful death provision in Lindgren v United States, 281 US 38, 74 L Ed 686, 50 S Ct 207 (1930). Petitioner, who was not a wrongful death beneficiary under the Jones Act, attempted to recover for the negligence of the shipowner under a state wrongful death statute. The Court held that the Jones Act preempted the state statute: "[The Jones] Act is one of general application intended to bring about the uniformity in the

exercise of admiralty jurisdiction required by the Constitution, and necessarily supersedes the application of the death statutes of the several States." Id., at 44, 74 L Ed 686, 50 S Ct 207. The Court also concluded that the Jones Act, limited as it is to recovery for negligence, would preclude recovery for the wrongful death of a seaman resulting from the unseaworthiness of the vessel. Id., at 47-48, 74 L Ed 686, 50 S Ct 207. In Gillespie v United States Steel Corp. 379 US 148, 13 L Ed 2d 199, 85 S Ct 308 (1964), the Court reaffirmed Lindgren and held that the Jones Act precludes recovery under a state statute for the wrongful death of a seaman due to unseaworthiness. 379 US, at 154-156, 13 L Ed 2d 199, 85 S Ct 308.

[8a] Neither Lindgren nor Gillespie considered the effect of the Jones Act on a general maritime wrongful death action. Indeed, no such action existed at the time those cases were decided. Moragne addressed the question explicitly. The Court explained there that the preclusive effect of the Jones Act established in Lindgren and Gillespie extends only to state remedies and not to a general maritime wrongful death action. See Moragne, 398 US, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772.

The Jones Act provides an action in negligence for the death or injury of a seaman. It thereby overruled

The Osceola, 189 US 158, 47 L Ed 760, 23 S Ct 483 (1903), which established that seamen could recover under general maritime law for injuries resulting from unseaworthiness, but not negligence. The Jones Act evinces no general hostility to recovery under maritime law. It does not disturb seamen's general maritime claims for injuries resulting from unseaworthiness, Pacific S.S. Co. v Peterson, 278 US 130, 139, 73 L Ed 220, 49 S Ct 75 (1928), and it does not preclude the recovery for wrongful death due to unseaworthiness created by its companion statute, DOHSA. Kernan v American Dredging Co. 355 US 426, 430, n 4, 2 L Ed 2d 382, 78 S Ct 394 (1958). Rather, the Jones Act establishes a uniform system of seamen's tort law parallel to that available to employees of interstate railway carriers under FELA. As the Court concluded in Moragne, the extension of the DOHSA wrongful death action to territorial waters furthers rather than hinders uniformity

in the exercise of admiralty jurisdiction. Moragne, supra, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772.

There is also little question that Moragne intended to create a general maritime wrongful death action applicable beyond the situation of longshoremen. For one thing, Moragne explicitly overruled The Harrisburg. Moragne, supra, at 409, 26 L Ed 2d 339, 90 S Ct 1772. The Harrisburg involved a true seaman. The Harrisburg, 119 US, at 200, 30 L Ed 358, 7 S Ct 140. In addition, all three of the "anomalies" to which the Moragne cause of action was directed involved seamen. The "strangest" anomaly—that recovery was available for the wrongful death in territorial waters of a longshoreman, but not a true seaman—could only be remedied if the Moragne wrongful death action extended to seamen. It would be strange indeed were we to read Moragne as not addressing a problem that in large part motivated its result. If there has been any doubt about the matter, we today make explicit that there is a general maritime cause of action for the wrongful death of a seaman, adopting the reasoning of the unanimous and carefully crafted opinion in Moragne.

IV

[1b] Moragne did not set forth the scope of the damages recoverable under the maritime wrongful death action. The Court first considered that question in Sea-Land Services, Inc. v Gaudet, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806 (1974). Respondent brought a general maritime action to recover for the wrongful death of her husband, a longshoreman. The Court held that a dependent plaintiff in a maritime wrongful death action could recover for the pecuniary losses of support, services, and funeral expenses, as well as for the nonpecuniary loss of society suffered as the result of the death. Id., at 591, 39 L Ed 2d 9, 94 S Ct 806. Gaudet involved the death of a longshoreman in territorial waters.[1]

Consequently, the Court had no need to consider the preclusive effect of DOHSA for deaths on the high seas or the Jones Act for deaths of true seamen.

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[1] As with Moragne, the 1972 amendments to LHWCA have rendered Gaudet inapplicable on its facts. See supra, at 28, 112 L Ed 2d, at 288; 33 USC § 905(b) [33 USCS § 905(b)]. Suit in Gaudet was filed before 1972. Gaudet v Sea-Land Services, Inc., 463 F2d 1331, 1332 (CA5 1972).

We considered DOHSA in Mobil Oil Corp. v Higginbotham, 436 US 618, 56 L Ed 2d 581, 98 S Ct 2010 (1978). That case involved death on the high seas and, like Gaudet, presented the question of loss of society damages in a maritime wrongful death action. The Court began by recognizing that Gaudet, although broadly written, applied only in territorial waters and therefore did not decide the precise question presented. 436 US, at 622-623, 56 L Ed 2d 581, 98 S Ct 2010. Congress made the decision for us. DOHSA, by its terms, limits recoverable damages in wrongful death suits to "*pecuniary* loss sustained by the persons for whose benefit the suit is brought." 46 USC App § 762 [46 USCS Appx § 762] (emphasis added). This explicit limitation forecloses recovery for nonpecuniary loss, such as loss of society, in a general maritime action.

[9] Respondents argued that admiralty courts have traditionally undertaken to supplement maritime statutes. The Court's answer in Higginbotham is fully consistent with those principles we have here derived from Moragne: Congress has spoken directly to the question of recoverable damages on the high seas, and "when it does speak directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that the Act becomes meaningless." Higginbotham, supra, at 625, 56 L Ed 2d 581, 98 S Ct 2010. Moragne involved gap filling in an area left open by statute; supplementation was entirely appropriate. But in an "area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries." Higginbotham, supra, at 625, 56 L Ed 2d 581, 98 S Ct 2010.

[1c] The logic of Higginbotham controls our decision here. The holding of Gaudet applies only in territorial waters, and it applies only to longshoremen. Gaudet did not consider the

[498 US 32]

preclusive effect of the Jones Act for deaths of true seamen. We do so now.

Unlike DOHSA, the Jones Act does not explicitly limit damages to any particular form. Enacted in 1920, the Jones Act makes applicable to seamen the substantive recovery provisions of the older FELA. See 46 USC App § 688 [46 USCS Appx § 688]. FELA recites only that employers shall be liable in "damages" for the injury or death of one protected under the Act. 45 USC § 51 [45 USCS § 51]. In Michigan Central R. Co. v Vreeland, 227 US 59, 57 L Ed 417, 33 S Ct 192 (1913), however, the Court explained that the language of the FELA wrongful death provision is essentially identical to that of Lord Campbell's Act, 9 & 10 Vict ch 93 (1846), the first wrongful death statute. Lord Campbell's Act also did not limit explicitly the "damages" to be recovered, but that Act and the many state statutes that followed it consistently had been interpreted as providing recovery only for pecuniary loss. Vreeland, 227 US, at 69-71, 57 L Ed 417, 33 S Ct 192. The Court so construed FELA. Ibid.

[1d, 10] When Congress passed the Jones Act, the Vreeland gloss on FELA, and the hoary tradition behind it, were well established. Incorporating FELA unaltered into the Jones

Act, Congress must have intended to incorporate the pecuniary limitation on damages as well. We assume that Congress is aware of existing law when it passes legislation. See Cannon v University of Chicago, 441 US 677, 696-697, 60 L Ed 2d 560, 99 S Ct 1946 (1979). There is no recovery for loss of society in a Jones Act wrongful death action.

[1e] The Jones Act also precludes recovery for loss of society in this case. The Jones Act applies when a seaman has been killed as a result of negligence, and it limits recovery to pecuniary loss. The general maritime claim here alleged that Torregano had been killed as a result of the unseaworthiness of the vessel. It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of

[498 US 33]

death resulting from negligence. We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.

Our decision also remedies an anomaly we created in Higginbotham. Respondents in that case warned that the elimination of loss of society damages for wrongful deaths on the high seas would create an unwarranted inconsistency between deaths in territorial waters, where loss of society was available under Gaudet, and deaths on the high seas. We recognized the value of uniformity, but concluded that a concern for consistency could not override the statute. Higginbotham, supra, at 624, 56 L Ed 2d 581, 98 S Ct 2010. Today we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

V

[2b, 11a] We next must decide whether, in a general maritime action surviving the death of a seaman, the estate can recover decedent's lost future earnings. Under traditional maritime law, as under common law, there is no right of survival; a seaman's personal cause of action does not survive the seaman's death. Cortes v Baltimore Insular Line, Inc. 287 US 367, 371, 77 L Ed 368, 53 S Ct 173 (1932); Romero v International Terminal Operating Co. 358 US 354, 373, 3 L Ed 2d 368, 79 S Ct 468 (1959); Gillespie, 379 US, at 157, 13 L Ed 2d 199, 85 S Ct 308.

[11b] Congress and the States have changed the rule in many instances. The Jones Act, through its incorporation of FELA, provides that a seaman's right of action for injuries due to negligence survives to the seaman's personal representative. See 45 USC § 59 [45 USCS § 59]; Gillespie, supra, at 157, 13 L Ed 2d 199, 85 S Ct 308. Most States have survival statutes applicable to tort actions generally, see 1 S. Speiser, Recovery for Wrongful Death 2d § 3.2 (1975 and Supp 1989), 2 id., §§ 14.1, 14.3, App, and admiralty courts have applied these state statutes in many instances to preserve suits for injury at sea. See, e.g., Just v Chambers, 312 US 383, 391, 85 L Ed 903, 61 S Ct 687 (1941). See also Kernan v American

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Dredging Co. 355 US, at 430, n 4, 2 L Ed 2d 382, 78 S Ct 394; Kossick v United Fruit Co. 365 US 731, 739, 6 L Ed 2d 56, 81 S Ct 886 (1961); Gillespie, supra, at 157, 13 L Ed 2d 199, 85 S Ct 308;

Comment, Application of State Survival Statutes in Maritime Causes, 60 Colum L Rev 534, 535, n 11 (1960); Nagy, The General Maritime Law Survival Action: What are the Elements of Recoverable Damages?, 9 U Haw L Rev 5, 27 (1987). Where these state statutes do not apply,[2] however, or where there is no state survival statute, there is no survival of unseaworthiness claims absent a change in the traditional maritime rule.

Several Courts of Appeals have relied on Moragne to hold that there is a general maritime right of survival. See Spiller v Thomas M. Lowe, Jr., & Assocs. Inc. 466 F2d 903, 909 (CA8 1972); Barbe v Drummond, 507 F2d 794, 799-800 (CA1 1974); Law v Sea Drilling Corp. 523 F2d 793, 795 (CA5 1975); Evich v Connelly, 759 F2d 1432, 1434 (CA9 1985). As we have noted, Moragne found that congressional and state abrogation of the maritime rule against wrongful death actions demonstrated a strong policy judgment, to which the Court deferred. Moragne, 398 US, at 388-393, 26 L Ed 2d 339, 90 S Ct 1772. Following this reasoning, the lower courts have looked to the Jones Act and the many state survival statutes and concluded that these enactments dictate a change in the general maritime rule against survival. See, e.g., Spiller, supra, at 909; Barbe, supra, at 799-800, and n 6.

Miles argues that we should follow the Courts of Appeals and recognize a general maritime survival right. Apex urges us to reaffirm the traditional maritime rule and overrule these decisions. We decline to address the issue, because its resolution is unnecessary to our decision on the narrow question presented: whether the income decedent would have earned but for his death is recoverable. We hold that it is not.

[12a] Recovery of lost future income in a survival suit will, in many instances, be duplicative of recovery by dependents for loss of support in a wrongful death action; the support dependents lose as a result of a seaman's death would have come from the seaman's future earnings. Perhaps for this reason, there is little legislative support for such recovery in survival. In only a few States can an estate recover in a survival action for income decedent would have received but for death.[3] At the federal level, DOHSA contains no survival provision. The Jones Act incorporates FELA's survival provision, but, as in most States, recovery is limited to losses suffered during the decedent's lifetime. See 45 USC § 59 [45 USCS § 59]; Van Beeck v Sabine Towing Co. 300 US 342, 347, 81 L Ed 685, 57 S Ct 452 (1937); St. Louis, I. M. & S. R. Co. v Craft, 237 US 648, 658, 59 L Ed 1160, 35 S Ct 704 (1915).

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[2] In Offshore Logistics, Inc. v Tallentire, 477 US 207, 215, n 1, 91 L Ed 2d 174, 106 S Ct 2485 (1986), we declined to approve or disapprove the practice of some courts of applying state survival statutes to cases involving death on the high seas.

[3] See Mich Comp Laws §§ 600.2921, 600.2922 (1986); Olivier v Houghton County St. R. Co. 134 Mich 367, 368-370, 96 NW 434, 435 (1903); 42 Pa Cons Stat § 8302 (1988); Incollingo v Ewing, 444 Pa 263, 307-308, 282 A2d 206, 229 (1971); Wash Rev Code § 4.20.060 (1989); Balmer v Dilley, 81 Wash 2d 367, 370, 502 P2d 456, 458 (1972). See generally 2 S. Speiser, Recovery for Wrongful Death 2d, § 14.7, App A (1975 and Supp 1989). Speiser explains that many States do not allow any recovery of lost earnings in survival, and that among those that do, recovery is generally limited to earnings lost from the time of injury to the time of death. Ibid.

[2c] This state and federal legislation hardly constitutes the kind of "wholesale" and "unanimous" policy judgment that prompted the Court to create a new cause of action in Moragne. See Moragne, supra, at 388, 389, 26 L Ed 2d 339, 90 S Ct 1772. To the contrary, the considered judgment of a large majority of American legislatures is that lost future income is not recoverable in a survival action. Were we to recognize a right to such recovery under maritime law, we would be adopting a distinctly minority view.

This fact alone would not necessarily deter us, if recovery of lost future income were more consistent with the general principles of maritime tort law. There are indeed strong

[498 US 36]

policy arguments for allowing such recovery. See, e.g., R. Posner, Economic Analysis of Law 176-181 (3d ed 1986) (recovery of lost future income provides efficient incentives to take care by ensuring that the tortfeasor will have to bear the total cost of the victim's injury or death). Moreover, Miles reminds us that admiralty courts have always shown a special solicitude for the welfare of seamen and their families. "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy." Moragne, supra, at 387, 26 L Ed 2d 339, 90 S Ct 1772, quoting Chief Justice Chase in The Sea Gull, 21 F Cas 909, 910 (No. 12,578) (CC Md 1865). See also Gaudet, 414 US, at 583, 39 L Ed 2d 9, 94 S Ct 806.

We are not unmindful of these principles, but they are insufficient in this case. We sail in occupied waters. Maritime tort law is now dominated by federal statute, and we are not free to expand remedies at will simply because it might work to the benefit of seamen and those dependent upon them. Congress has placed limits on recovery in survival actions that we cannot exceed. Because this case involves the death of a seaman, we must look to the Jones Act.

[2d, 12b] The Jones Act/FELA survival provision limits recovery to losses suffered during the decedent's lifetime. See 45 USC § 59 [45 USCS § 59]. This was the established rule under FELA when Congress passed the Jones Act, incorporating FELA, see St. Louis, I. M. & S. R. Co. supra, at 658, 59 L Ed 1160, 35 S Ct 704, and it is the rule under the Jones Act. See Van Beeck, supra, at 347, 81 L Ed 685, 57 S Ct 452. Congress has limited the survival right for seamen's injuries resulting from negligence. As with loss of society in wrongful death actions, this forecloses more expansive remedies in a general maritime action founded on strict liability. We will not create, under our admiralty powers, a remedy that is disfavored by a clear majority of the States and that goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death. Because Torregano's estate cannot recover for his lost future income under the Jones Act, it cannot do so under general maritime law.

[498 US 37]

VI

[1f, 2e, 8b] Cognizant of the constitutional relationship between the courts and Congress, we today act in accordance with the uniform plan of maritime tort law Congress created in DOHSA and the Jones Act. We hold that there is a general maritime cause of action for the wrongful death of a seaman, but that damages recoverable in such an action do not include loss of society. We also hold that a general maritime survival action cannot include recovery for decedent's lost future earnings. Accordingly, the judgment of the Court of Appeals is affirmed.

Justice **Souter** took no part in the consideration or decision of this case.

MEMORANDUM CASES

No. 90-5958 (A-294). Wilbert Lee Evans, Petitioner v Raymond Muncy, Warden, et al.

498 US 927, 112 L Ed 2d 295, 111 S Ct 309.

October 17, 1990. The application for stay of execution of sentence of death, presented to The Chief Justice, and by him referred to the Court, is denied. The petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit is denied.

Same case below, 916 F2d 163.

Justice Marshall, dissenting.

This Court's approval of the death penalty has turned on the premise that given sufficient procedural safeguards the death penalty may be administered fairly and reliably. E.g., Gregg v Georgia, 428 US 153, 195-196, and n 47, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). Wilbert Evans' plea to be spared from execution demonstrates the fallacy of this assumption. Notwithstanding the panoply of procedural protections afforded Evans by this Court's capital jurisprudence, Evans today faces an imminent execution that even the State of Virginia appears to concede is indefensible in light of the undisputed facts proffered by Evans. Because an execution under these circumstances highlights the inherently cruel and unusual character of capital punishment, I dissent.

I

Evans was convicted of capital murder and sentenced to death. At the sentencing phase, the jury's verdict was predicated on a *single* aggravating circumstance: that if allowed to live Evans would pose a serious threat of future danger to society. See Va Code § 19.2-264.4(C) (1990). Without this finding, Evans could not have been sentenced to death. See e.g., Furman v Georgia, 408 US 238, 313, 33 L Ed 2d 346, 92 S Ct 2726 (1972) (White, J., concurring) (existence of aggravating circumstance "distinguishing the few cases in which [the death penalty] is imposed" from those in which it is not is a constitutional prerequisite to death sentence); Gregg v Georgia, supra, at 188-189, 49 L Ed 2d 859, 96 S Ct 2909 (same).[1]

While Evans was on death row at the Mecklenberg Correctional Facility, an event occurred that casts grave doubt on the jury's prediction of Evans' future dangerousness. On

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[1] Evans initially was sentenced to death in April 1981. At his first sentencing proceeding, the prosecutor proved Evans' future dangerousness principally through reliance upon seven purported out-of-state convictions, two of which the prosecutor later admitted were false. Two years later, after having relied on these bogus convictions in its successful oppositions to both Evans' direct appeal to the Virginia Supreme Court and his petition for a writ of certiorari to this Court, the State confessed error. Evans' death sentence was vacated, and he was granted a new sentencing hearing. See Evans v Virginia, 471 US 1025, 1026-1027, 85 L Ed 2d 319, 105 S Ct 2037 (1985) (Marshall, J., dissenting from denial of certiorari). In March 1984, Evans once again was sentenced to death. It is this second death sentence which he now seeks to stay.

May 31,1984, six death row inmates at Mecklenberg attempted to engineer an escape. Armed with makeshift knives, these inmates took hostage 12 prison guards and 2 female nurses. The guards were stripped of their clothes and weapons, bound, and blindfolded. The nurses also were stripped of their clothes, and one was bound to an inmate's bed.

According to uncontested affidavits presented by guards taken hostage during the uprising, Evans took decisive steps to calm the riot, saving the lives of several hostages, and preventing the rape of one of the nurses.[2] For instance, Officer Ricardo Holmes, who was bound by the escaping inmates and forced into a closet with other hostages, states that he heard Evans imploring to the escaping inmates, " 'Don't hurt anybody and everything will be allright.' " Officer Holmes continues:

> "It was very clear to me that [Evans] was trying to keep [the escaping inmates] calm and prevent them from getting out of control . . . . Based upon what I saw and heard, it is my firm opinion that if any of the escaping inmates had tried to harm us, Evans would have come to our aid. It is my belief that had it not been for Evans, I might not be here today." See, Exh. 14. Pet for Cert.

Other guards taken hostage during the uprising verify Officer Holmes' judgment that Evans protected them and the other hostages from danger. According to Officer Prince Thomas, Evans interceded to prevent the rape of Nurse Ethyl Barksdale by one of the escaping inmates. Id., Exh. 9. Officer Harold Crutchfield affirms that Evans' appeals to the escapees not to harm anyone may have meant the difference between life and death for the hostages. "It is . . . my firm belief that if Evans had not been present during the escape, things may have blown up and people may have been harmed." Id., Exh. 8. According to Officer Crutchfield, after the escapees had left the area in which they were holding the guards hostage, Evans tried to force open the closet door and free the guards—albeit unsuccessfully. Ibid. Officers Holmes, Thomas, and Crutchfield, and five other prison officials all attest that Evans' conduct during the May 31, 1984, uprising was consistent with his exemplary behavior during his close to 10 years on death row. Id., Exhs. 8-15.

Evans filed a writ of habeas corpus and application for a stay of his execution before the United States District Court for the Eastern District of Virginia. He urged that the jury's prediction of his future dangerousness be reexamined in light of his conduct during the Mecklenberg uprising. Evans proffered that these events would prove that the jury's prediction was unsound and thereby invalidate the sole aggravating circumstance on which the jury based its death sentence. For this reason, Evans argued that his death sentence must be vacated. The District Court stayed the execution and ordered a hearing. Civ No. 90-00559-R (ED Va, Oct. 13, 1990). The Court of Appeals reversed and vacated the stay. No. 90-4007 (CA4, Oct. 16, 1990) (per curiam).

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[2] The affiant prison officials all attest that Evans played no role in instigating the riot.

II

Remarkably, the State of Virginia's opposition to Evans' application to stay the execution barely contests either Evans' depiction of the relevant events or Evans' conclusion that these events reveal the clear error of the jury's prediction of Evans' future dangerousness.[3] In other words, the State concedes that the sole basis for Evans' death sentence —future dangerousness—in fact *does not exist.*

The only ground asserted by the State for permitting Evans' execution to go forward is its interest in procedural finality. According to the State, permitting a death row inmate to challenge a finding of future dangerousness by reference to facts occurring after the sentence will unleash an endless stream of litigation. Each instance of an inmate's post-sentencing nonviolent conduct, the State argues, will form the basis of a new attack upon a jury's finding of future dangerousness, and with each new claim will come appeals and collateral attacks. By denying Evans' application for a stay, this Court implicitly endorses the State's conclusion that it is entitled to look the other way when late-arriving evidence upsets its determination that a particular defendant can lawfully be executed.

In my view, the Court's decision to let Wilbert Evans be put to death is a compelling statement of the failure of this Court's capital jurisprudence. This Court's approach since Gregg v Georgia has blithely assumed that strict procedures will satisfy the dictates of the Eighth Amendment's ban on cruel and unusual punishment. As Wilbert Evans' claim makes crystal clear, even the most exacting procedures are fallible. Just as the jury occasionally "gets it wrong" about whether a defendant charged with murder is innocent or guilty, so, too, can the jury "get it wrong" about whether a defendant convicted of murder is deserving of death, notwithstanding the exacting procedures imposed by the Eighth Amendment. The only difference between Wilbert Evans' case and that of many other capital defendants is that the defect in Evans' sentence has been made unmisakably clear for us even before his execution is to be carried out.

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[3] Equally remarkable is the sheer gall of the manner in which the State makes its feeble challenge. For six years, Evans' counsel has tried to pry loose from the State copies of its investigative reports of the uprising. Counsel steadfastly has contended that these reports would support Evans' account of the relevant events and thereby strengthen Evans' claims for both legal relief and executive clemency. The State has refused to release its iron grip on these materials and to this moment has not made them available to him. See Exh. 6. Pet for Cert.

According to Evans' counsel, late last evening he was contacted by counsel for Willie Lloyd Turner, another Virginia death row inmate involved in the Mecklenberg uprising. Notwithstanding its refusal to cooperate with Evans' request for the investigative reports, the State, without protest, had provided these reports to Turner's counsel. Upon learning of Evans' impending execution, Turner's counsel immediately delivered these materials to Evans' counsel, see id., Exh. 17 and Evans has now been able to make them available to us, see id., Exh. 18.

Now that Evans finally has possession of information the State has so deliberately denied him for *six* years, the State cites two isolated excerpts from a lengthy set of materials in a mean and deceitful attempt to belittle Evans' claims. See App to Brief in Opposition 1-2. A more honest and thorough review of these materials, which include numerous interviews with the hostages and reports of the State's investigators, reveals that these materials in no way diminish Evans' account of the relevant events.

The State's interest in "finality" is no answer to this flaw in the capital sentencing system. It may indeed be the case that a State cannot realistically accommodate postsentencing evidence casting doubt on a jury's finding of future dangerousness; but it hardly follows from this that it is Wilbert Evans who should bear the burden of this procedural limitation. In other words, if it is impossible to construct a system capable of accommodating *all* evidence relevant to a man's entitlement to be spared death—no matter when that evidence is disclosed—then it is the *system,* not the life of the man sentenced to death, that should be dispatched.

The indifferent shrug of the shoulders with which the Court answers the failure of its procedures in this case reveals the utter bankruptcy of its notion that a system of capital punishment can coexist with the Eighth Amendment. A death sentence that is *dead wrong* is no less so simply because its deficiency is not uncovered until the eleventh hour. A system of capital punishment that would permit Wilbert Evans' execution notwithstanding as-to-now unrefuted evidence showing that death is an improper sentence is a system that cannot stand.

I would stay Wilbert Evans' execution.

No. A-309. Barbara J. Norman, et al., Applicants v Dorothy Reed, et al.

498 US 931, 112 L Ed 2d 298, 111 S Ct 333.

October 25, 1990. The application for stay, presented to Justice Stevens, and by him referred to the Court, is granted to the extent that the August 29, 1990, decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari.

No. A-280. Curtis Lee Kyles, Applicant v John Whitley, Warden

498 US 931, 112 L Ed 2d 298, 111 S Ct 333.

October 26, 1990. The application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, is denied. Justice Blackmun would grant the application for stay.

Justice Stevens, concurring.

Unless there has been inexcusable delay on the part of the petitioner, I believe every person who has been sentenced to death should be given a fair opportunity to have his or her federal constitutional claims reviewed in a federal habeas corpus proceeding. In order to expedite that process, it might be appropriate to place a more practical construction on the requirement that state remedies must first be exhausted than the Court has been willing to accept, compare Rose v Lundy, 455 US 509, 71 L Ed 2d 379, 102 S Ct 1198 (1982), with id., at 522-531, 71 L Ed 2d 379, 102 S Ct 1198 (Blackmun, J., concurring in judgment), and id., at 545-550, 71 L Ed 2d 379, 102 S Ct 1198 (Stevens, J., dissenting). Under the Court's current interpretation of the law, however, complete exhaustion of all state collateral remedies is an essential predicate for the commencement of federal habeas corpus proceedings.

The present application is from a state court's denial of relief in a collateral proceeding. Because the scope of the State's obligation to provide collateral review is shrouded in so much uncertainty, see Case v Nebraska, 381 US 336, 14 L Ed 2d 422, 85 S Ct 1486 (1965), this Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims. See Huffman v Florida, 435 US 1014, 1017-1018, 56 L Ed 2d 395, 98 S Ct 1888 (1978) (Stevens, J., respecting denial of petition for certiorari). For that reason, I am persuaded that it is appropriate for this Court to deny this application for review of the State's denial of collateral relief and thus to clear the way for the prompt initiation of federal habeas corpus proceedings. I assume that in such a proceeding the district court will routinely enter a stay of execution that will enable it to give full and deliberate consideration to the applicant's constitutional claims. On review of the disposition of such an application by the district court and the court of appeals, I regularly vote to stay any scheduled execution in order to be sure that a death row inmate may have the same opportunity to have his or her federal claims considered by this Court as does any other applicant. The denial of the present application should not, therefore, be construed as having been predicated on a determination that there is no merit in the claims asserted in the state collateral review process.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution in order to give the applicant time to file a petition for a writ of certiorari, and would grant the petition and vacate the death sentence in this case.

No. 89-2007. Connecticut, Petitioner v Daisy Hamilton

498 US 933, 112 L Ed 2d 299, 111 S Ct 334.

October 29, 1990. On petition for writ of certiorari to the Supreme Court of Connecticut. The motion of respondent for leave to proceed in forma pauperis without an affidavit executed by respondent is granted. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Supreme Court of Connecticut for further consideration in light of Horton v California, 496 US 128, 110 L Ed 2d 112, 110 S Ct 2301 (1990).

Same case below, 214 Conn 692, 573 A2d 1197.

No. 90-237. Orscheln Brothers Truck Lines, Inc., et al., Petitioners v Zenith Electronics Corporation, fka Zenith Radio Corporation, et al.

498 US 933, 112 L Ed 2d 300, 111 S Ct 334.

October 29, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of Maislin Industries, U. S., Inc. v Primary Steel, Inc. 497 US 116, 111 L Ed 2d 94, 110 S Ct 2759 (1990).

Same case below, 899 F2d 642.

No. ——. Concepcion C. Boado, Petitioner v Office of Personnel Management

498 US 933, 112 L Ed 2d 300, 111 S Ct 334.

October 29, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. ——. Ricardo Villegas, Petitioner v United States

498 US 933, 112 L Ed 2d 300, 111 S Ct 334.

October 29, 1990. The motion for leave to proceed in forma pauperis without an affidavit of indigency executed by the petitioner is granted.

No. A-231 (90-5825). Paul Fazzini, Petitioner v Glen Henman, et al.

498 US 933, 112 L Ed 2d 300, 111 S Ct 339.

October 29, 1990. The application for a temporary restraining order, addressed to Justice Blackmun and referred to the Court, is denied.

No. A-268 (90-555). Michael R. Wood, Petitioner v Alameda County Superior Court, et al.

498 US 933, 112 L Ed 2d 300, 111 S Ct 339.

October 29, 1990. The application for stay of judgment, addressed to Justice Marshall and referred to the Court, is denied.

No. A-300. Planned Parenthood Federation of America, et al., Applicants v Agency for International Development, et al.

498 US 933, 112 L Ed 2d 300, 111 S Ct 335.

October 29, 1990. The application for an injunction, presented to Justice Marshall, and by him referred to the Court, is denied. Justice Stevens would grant the application.

No. 105, Original. State of Kansas, Plaintiff v State of Colorado

498 US 933, 112 L Ed 2d 301, 111 S Ct 335.

October 29, 1990. The motion of the Special Master for interim fees and expenses is granted, and the Special Master is awarded $75,973.75 for the period November 1, 1989, through September 16, 1990, to be paid by the parties as follows: 40 percent by Kansas, 40 percent by Colorado, and 20 percent by the United States.

Justice Blackmun.

It seems to me that some aspects of the fees and expenses now requested by the Special Master come close—if they do not exceed—the limits of allowability. See the dissents in Louisiana v Mississippi, 466 US 921 and 923, 80 L Ed 2d 175, 104 S Ct 1701 (1984), and Texas v New Mexico, 475 US 1004, 89 L Ed 2d 360, 106 S Ct 1168 (1986). As was there pointed out, fees and expenses charged by a Special Master, when allowed by this Court, represent our assurance to the parties that the charges are reasonable and proper. A party's consent to the allowance of fees and expenses does not absolve this Court of its duty to make that determination. With a distinct lack of enthusiasm for the Court's present order allowing fees and expenses that appear to be escalating in this case as to both amounts and personnel, inasmuch as no party has noted an objection on this particular occasion, I do not yet formally dissent.

No. 108, Original. State of Nebraska, Plaintiff v State of Wyoming and State of Colorado

498 US 934, 112 L Ed 2d 301, 111 S Ct 335.

October 29, 1990. The Fourth interim motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is awarded $72,970.75 for the period October 1, 1989, through September 30, 1990, to be paid by the parties as follows: 40 percent by Nebraska, 40 percent by Wyoming, and 20 percent by the United States.

No. 89-1027. Norfolk and Western Railway Company, et al., Petitioners v American Train Dispatchers' Association, et al.

No. 89-1028. CSX Transportation, Inc., Petitioner v Brotherhood of Railway Carmen, et al.

498 US 934, 112 L Ed 2d 301, 111 S Ct 335, 111 S Ct 336.

October 29, 1990. The motion of the Acting Solicitor General for divided argument is granted.

No. 89-1149. Coy R. Grogan, et al., Petitioners v Frank J. Garner, Jr.

498 US 934, 112 L Ed 2d 301, 111 S Ct 336.

October 29, 1990. The motion of the Solicitor General for leave to permit Robert A. Long, Jr., Esquire, to present oral argument pro hac vice is denied.

No. 89-1322. Oklahoma Tax Commission, Petitioner v Citizen Band Potawatomi Indian Tribe of Oklahoma

498 US 935, 112 L Ed 2d 302, 111 S Ct 336.

October 29, 1990. The motion of petitioner to dispense with printing the joint appendix is granted.

No. 90-79. Richard B. Kay, Petitioner v Bremer Ehrler and Kentucky Board of Elections

498 US 935, 112 L Ed 2d 302, 111 S Ct 336.

October 29, 1990. The motion of petitioner to dispense with printing the joint appendix is granted.

No. 89-1632. California, Petitioner v Hodari D.

498 US 935, 112 L Ed 2d 302, 111 S Ct 336.

October 29, 1990. The motion for appointment of counsel is granted, and it is ordered that James L. Lozenski, Esquire, of Berkeley, California, be appointed to serve as counsel for the respondent in this case.

No. 89-1862. Daniel J. McCarthy, Director, California Department of Corrections, Petitioner v Roulette Blair

498 US 935, 112 L Ed 2d 302, 111 S Ct 337.

October 29, 1990. The motion for appointment of counsel is granted, and it is ordered that Paul E. Potter, Esquire, of Pasadena, California, be appointed to serve as counsel for the respondent in this case.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 935, 112 L Ed 2d 302, 111 S Ct 337.

October 29, 1990. The motion for appointment of counsel is granted, and it is ordered that Joann Bour-Stokes, Esq., of Columbus, Ohio, be appointed to serve as counsel for the respondent in this case.

No. 89-1696. Peabody Coal Company, et al., Petitioners v Hubert C. Taylor, et al.

498 US 935, 112 L Ed 2d 302, 111 S Ct 337.

October 29, 1990. The motion of respondents to substitute Charles Martin, Personal Representative of the Estate of Hubert Taylor, deceased, in place of Hubert Taylor is granted. The motion of respondent Martin for leave to proceed in forma pauperis is granted. The motion to consolidate this case with No. 89-1714, Harriet Pauley, Survivor of John C. Pauley v Bethenergy Mines, Inc., et al.; No. 90-113, Clinchfield

Coal Company v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.; and No. 90-114, Consolidation Coal Company v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al., infra, is denied.

No. 89-7272. Ronald Allen Harmelin, Petitioner v Michigan

498 US 935, 112 L Ed 2d 303, 111 S Ct 337.

October 29, 1990. The motion of petitioner to strike nonrecord material is granted. The respondent is directed to reprint the brief.

No. 89-7370. Moshe Gozlon-Peretz, Petitioner v United States

498 US 936, 112 L Ed 2d 303, 111 S Ct 338.

October 29, 1990. The motion of the Solicitor General for leave to permit Amy L. Wax, Esq., to present oral argument pro hac vice is granted.

No. 89-7691. Dale Robert Yates, Petitioner v Parker Evatt, Commissioner, South Carolina Department of Corrections, et al.

498 US 936, 112 L Ed 2d 303, 111 S Ct 338.

October 29, 1990. The motion for appointment of counsel is granted, and it is ordered that David I. Bruck, Esquire, of Columbia, South Carolina, be appointed to serve as counsel for the petitioner in this case.

No. 90-240. James L. Polk, et ux., Petitioners v Dixie Insurance Company

498 US 936, 112 L Ed 2d 303, 111 S Ct 338.

October 29, 1990. The motion of petitioners to consolidate with No. 89-7743, Edmonson v Leesville Concrete Co., is denied.

No. 90-380. Consolidated Rail Corporation, Petitioner v Delaware & Hudson Railway Company

498 US 936, 112 L Ed 2d 303, 111 S Ct 338.

October 29, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-383. Sam Whitfield, Jr., et al., Petitioners v Bill Clinton, Governor of Arkansas, et al.

498 US 936, 112 L Ed 2d 303, 111 S Ct 338.

October 29, 1990. The Solicitor

General is invited to file a brief in this case expressing the views of the United States.

No. 90-404. Illinois State Labor Relations Board, et al., Petitioners v Illinois Nurses Association, et al.

498 US 936, 112 L Ed 2d 304, 111 S Ct 339.

October 29, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-5193. Dawud Majid Mu'Min, Petitioner v Virginia

498 US 936, 112 L Ed 2d 304, 111 S Ct 339.

October 29, 1990. The motion for appointment of counsel is granted, and it is ordered that John H. Blume, Esquire, of Columbia, South Carolina, be appointed to serve as counsel for the petitioner in this case.

No. 90-5536. Henry H. Amsden, Petitioner v Thomas F. Moran, et al.

498 US 936, 112 L Ed 2d 304, 111 S Ct 339.

October 29, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until November 19, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. Justice Souter took no part in the consideration or decision of this motion.

Justice Marshall and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co. Inc. 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

No. 89-1714. Harriet Pauley, Survivor of John C. Pauley, Petitioner v BethEnergy Mines, Inc., et al.

No. 90-113. Clinchfield Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

No. 90-114. Consolidation Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

498 US 937, 112 L Ed 2d 304, 111 S Ct 340.

October 29, 1990. The motion of respondent John Taylor for leave to proceed in forma pauperis in No. 90-113 is granted. The petition for writ of certiorari to the United States Court of Appeals for the Third Circuit is granted in No. 89-1714. The petitions for writs of certiorari to the United States Court of Appeals for the Fourth Circuit are granted in Nos. 90-113 and 90-114. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 890 F2d 1295 (first case); 895 F2d 178 (second case); 895 F2d 173 (third case).

No. 90-5319. Paul McNeil, Petitioner v Wisconsin

498 US 937, 112 L Ed 2d 305, 111 S Ct 340.

October 29, 1990. The motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari to the Supreme Court of Wisconsin granted.

Same case below, 155 Wis 2d 24, 454 NW2d 742.

No. 89-7662. Roger Keith Coleman, Petitioner v Charles E. Thompson, Warden

498 US 937, 112 L Ed 2d 305, 111 S Ct 340.

October 29, 1990. The motion of petitioner for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted limited to Questions 2, 3, and 4 presented by the petition.

Same case below, 895 F2d 139.

No. 89-353. Jennie Sanchez, et al., Petitioners v William Bond, et al.

498 US 937, 112 L Ed 2d 305, 111 S Ct 340.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 875 F2d 1488.

No. 89-989. City of Norfolk, Virginia, et al., Petitioners v Herbert M. Collins, et al.

498 US 938, 112 L Ed 2d 305, 111 S Ct 340.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 883 F2d 1232.

No. 89-1409. Steven C. Ostrander, Petitioner v Linda K. Wood

498 US 938, 112 L Ed 2d 305, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 879 F2d 583.

No. 89-1897. Billie R. Schlank, Petitioner v Katherine A. Williams, Acting Administrator, Rehabilitation Services Administration, Department of Human Services of District of Columbia

498 US 938, 112 L Ed 2d 306, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 572 A2d 101.

No. 89-1979. Board of Trustees of the University of Kentucky, et al., Petitioners v Joseph Murray Hayse

498 US 938, 112 L Ed 2d 306, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

Same case below, 782 SW2d 609.

No. 89-2004. Thomas F. Krantz, Petitioner v Montana

498 US 938, 112 L Ed 2d 306, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Montana denied.

Same case below, 241 Mont 501, 788 P2d 298.

No. 89-7531. Norman Moorhead, Petitioner v Texas

498 US 938, 112 L Ed 2d 306, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied.

No. 89-7597. Daniel J. Neville, Petitioner v John Whitley, Warden

498 US 938, 112 L Ed 2d 306, 111 S Ct 341.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 89-7605. Donnis Glen Humphrey, Petitioner v United States

498 US 938, 112 L Ed 2d 306, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 1066.

No. 89-7606. Wallace Russell Whitehead, Petitioner v United States

498 US 938, 112 L Ed 2d 306, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 896 F2d 432.

No. 89-7716. James Pifer, Petitioner v California

498 US 938, 112 L Ed 2d 307, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fifth Appellate District, denied.

Same case below, 216 Cal App 3d 956, 265 Cal Rptr 237.

No. 89-7722. Steven Summers, Petitioner v Utah, et al.

498 US 938, 112 L Ed 2d 307, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 89-7781. Christopher Williams, Petitioner v United States

498 US 938, 112 L Ed 2d 307, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 898 F2d 659.

No. 89-7882. Harold Kenneth James, Petitioner v United States

498 US 938, 112 L Ed 2d 307, 111 S Ct 342.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-66. Santiago Sandoval, Petitioner v Illinois

498 US 938, 112 L Ed 2d 307, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 135 Ill 2d 159, 142 Ill Dec 135, 552 NE2d 726.

No. 90-125. Hughes Anderson Bagley, Jr., Petitioner v United States

498 US 938, 112 L Ed 2d 307, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 899 F2d 707.

No. 90-140. Laborers Pension Trust Fund for Northern California, Petitioner v Marion J. Imel

498 US 939, 112 L Ed 2d 308, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 1327.

No. 90-152. Florida, Petitioner v Nadine Nelson, et al.

498 US 939, 112 L Ed 2d 308, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Fifth District, denied.

Same case below, 553 So 2d 195.

No. 90-193. Tony Steven Stone and Patsy Ann Dunn Holliday, Petitioners v United States

498 US 939, 112 L Ed 2d 308, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 257.

No. 90-218. Isaac Fogel, Petitioner v United States

498 US 939, 112 L Ed 2d 308, 111 S Ct 343.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 901 F2d 23.

No. 90-236. Steve Jordan, Petitioner v Cameron Iron Works, Inc.

498 US 939, 112 L Ed 2d 308, 111 S Ct 344.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 900 F2d 53.

No. 90-247. Daniel H. Overmyer, Petitioner v United States

498 US 939, 112 L Ed 2d 308, 111 S Ct 344.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 457.

No. 90-253. National Engineering & Contracting Company, Petitioner v Occupational Safety and Health Review Commission, et al.

498 US 939, 112 L Ed 2d 308, 111 S Ct 344.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 34.

No. 90-255. New York Telephone Company, et al., Petitioners v Joseph Cahill, et al.

498 US 939, 112 L Ed 2d 309, 111 S Ct 344.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 102, 556 NYS2d 840, 556 NE2d 133.

No. 90-286. Rochelle Konits, Petitioner v New York

498 US 939, 112 L Ed 2d 309, 111 S Ct 344.

October 29, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 159 App Div 2d 590, 552 NYS2d 448.

No. 90-355. Southern Pacific Transportation Company, Petitioner v Barbara A. Luck

498 US 939, 112 L Ed 2d 309, 111 S Ct 344.

October 29, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

Same case below, 218 Cal App 3d 1, 267 Cal Rptr 618.

No. 90-356. Andrew G. Yartzoff, Petitioner v William K. Reilly, Administrator, Environmental Protection Agency

498 US 939, 112 L Ed 2d 309, 111 S Ct 345.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 42.

No. 90-358. Travel Services, Inc., Petitioner v Government of the Virgin Islands, et al.

498 US 939, 112 L Ed 2d 309, 111 S Ct 345.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 186.

No. 90-363. Carlos Luna, Petitioner v Superior Court of Massachusetts

498 US 939, 112 L Ed 2d 309, 111 S Ct 345.

October 29, 1990. Petition for writ

of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 407 Mass 747, 555 NE2d 881.

No. 90-364. Eleanor Armell, a Minor, Through her Court-Appointed Attorney and Guardian ad Litem, Patrick T. Murphy, Petitioner v Prairie Band of Potawatomi Indians

498 US 940, 112 L Ed 2d 310, 111 S Ct 345.

October 29, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 194 Ill App 3d 31, 141 Ill Dec 14, 550 NE2d 1060.

No. 90-369. Harley Vollrath, Petitioner v Georgia Pacific Corporation

498 US 940, 112 L Ed 2d 310, 111 S Ct 345.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 533.

No. 90-375. James Leslie Brown, Petitioner v Curtis D. Earp, Jr., Commissioner, Georgia Department of Public Safety

498 US 940, 112 L Ed 2d 310, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 260 Ga 215, 391 SE2d 396.

No. 90-377. Linda Morrison, et al., Petitioners v Pennsylvania Convention Center Authority, et al.

498 US 940, 112 L Ed 2d 310, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

Same case below, 127 Pa Cmwlth 470, 561 A2d 1337.

No. 90-384. John Curlee, Superintendent, Aberdeen School District, et al., Petitioners v Mary Ann Fyfe

498 US 940, 112 L Ed 2d 310, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 401.

No. 90-391. Lee's Summit Reorganized School District, et al., Petitioners v Jennifer T. Naylor, et al.

498 US 940, 112 L Ed 2d 311, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 904 F2d 415.

No. 90-392. Francis M. Ganz, Petitioner v James B. Zagel, Director, Illinois Department of State Police

498 US 940, 112 L Ed 2d 311, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 193 Ill App 3d 1051, 140 Ill Dec 882, 550 NE2d 1007.

No. 90-393. City of DeSoto, Texas, et al., Petitioners v Douglas Morgan, et al.

498 US 940, 112 L Ed 2d 311, 111 S Ct 346.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 900 F2d 811.

No. 90-402. Betty Jo Mayeske, et al., Petitioners v International Association of Fire Fighters, et al.

498 US 940, 112 L Ed 2d 311, 111 S Ct 347.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 381, 905 F2d 1548.

No. 90-407. Collateral Protection Insurance Services, et al., Petitioners v Balboa Insurance Company, et al.

498 US 940, 112 L Ed 2d 311, 111 S Ct 347.

October 29, 1990. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

Same case below, 218 Cal App 3d 1327, 267 Cal Rptr 787.

No. 90-410. Bruce Cohn, et al., Petitioners v David Katz, et al.

498 US 940, 112 L Ed 2d 311, 111 S Ct 347.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 262.

No. 90-414. Mumtaz Bano Khan, Petitioner v Jimmy R. Jenkins, John H. Carson, Marion D. Thorpe, and Elizabeth City State University

498 US 941, 112 L Ed 2d 312, 111 S Ct 347.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1530.

No. 90-416. Rocco DiLeo, et ux., Petitioners v Ernst & Young

498 US 941, 112 L Ed 2d 312, 111 S Ct 347.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 901 F2d 624.

No. 90-419. John Doe, Petitioner v Borough of Clifton Heights, Pennsylvania, et al.

498 US 941, 112 L Ed 2d 312, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1559.

No. 90-421. Louella F. Benson, Petitioner v Glenn A. Ally, et al.

498 US 941, 112 L Ed 2d 312, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-423. Neil Rodin, Individually, and as Successor of Irving Rodin, and Barbara Rodin, Petitioners v Tessie Salzman, Personal Representative of the Estate of Nettie Golden, Deceased

498 US 941, 112 L Ed 2d 312, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-424. J. J. Blonien & Associates, Inc., et al., Petitioners v Community Newspapers, Inc., et al.

498 US 941, 112 L Ed 2d 312, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

Same case below, 156 Wis 2d 350, 456 NW2d 646.

No. 90-427. Robert C. Greene, Petitioner v Town Board of Warrensburg, et al.

498 US 941, 112 L Ed 2d 313, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 159 App Div 2d 781, 552 NYS2d 62.

No. 90-428. Richard E. Chitwood, et ux., Petitioners v John C. McLemore, Trustee in Bankruptcy for Circle W. Dairy Farms, et al.

498 US 941, 112 L Ed 2d 313, 111 S Ct 348.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 706.

No. 90-430. Paulette Shelton, Petitioner v Greater Cleveland Regional Transit Authority

498 US 941, 112 L Ed 2d 313, 111 S Ct 349, reh den 498 US 1042, 112 L Ed 2d 704, 111 S Ct 716.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

Same case below, 65 Ohio App 3d 665, 584 NE2d 1323.

No. 90-441. Pyburn Enterprises, Inc., Petitioner v Allen W. Bird, II, as Trustee for Northwest Financial Express, Inc., et al.

498 US 941, 112 L Ed 2d 313, 111 S Ct 349.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 904 F2d 469.

No. 90-445. D. Patrick Winburn, Petitioner v Bennington-Rutland Supervisory Union

498 US 941, 112 L Ed 2d 313, 111 S Ct 349.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1473.

No. 90-448. Ford Motor Company, et al., Petitioners v Christine Mahne

498 US 941, 112 L Ed 2d 313, 111 S Ct 349.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 83.

No. 90-458. Frank J. Camoscio, Petitioner v The Patriot Ledger, et al.

498 US 942, 112 L Ed 2d 314, 111 S Ct 349, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Massachusetts denied.

Same case below, 28 Mass App 1119, 553 NE2d 1315.

No. 90-468. Donald D. Bertola, Petitioner v New Jersey

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-470. Susan Glasbrenner, Petitioner v Robert M. Sapio, Jr.

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-479. J. Casper Heimann, et al., Petitioners v Amoco Production Company

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 904 F2d 1405.

No. 90-483. Jerome C. McKnight, Petitioner v United States

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 205.

No. 90-496. Martha MacNeal Zweig, Petitioner v Michael F. Zweig

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Vermont denied.

Same case below, 154 Vt 468, 580 A2d 939.

No. 90-510. Gerald Victor Boucher, Petitioner v United States

498 US 942, 112 L Ed 2d 314, 111 S Ct 350.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 1170.

No. 90-567. Bobby Mitchell Wedlock, Petitioner v Maryland

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 81 Md App 782.

No. 90-5073. Joseph A. Bettistea, Jr., Petitioner v Michigan

498 US 942, 112 L Ed 2d 315, 111 S Ct 351, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 29, 1990. Petition for writ of certiorari to the Circuit Court of Michigan, Kent County, denied.

No. 90-5086. Reginald Ellis, Petitioner v Illinois

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 187 Ill App 3d 295, 134 Ill Dec 913, 543 NE2d 196.

No. 90-5088. Jeffrey Balawajder, Petitioner v Robert Winter

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5093. John Valdez Martinez, Petitioner v United States

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 1445.

No. 90-5142. Titus Williams, Petitioner v United States

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5164. Jeremiah Humphrey, Petitioner v Illinois

498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 136 Ill 2d 1, 143 Ill Dec 889, 554 NE2d 961.

No. 90-5173. Sabino Del Rosario, Petitioner v United States

498 US 942, 112 L Ed 2d 316, 111 S Ct 352.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 90, 902 F2d 55.

No. 90-5215. Timothy John O'Meara, Petitioner v United States

No. 90-5468. David Anthony Kost, Petitioner v United States

498 US 943, 112 L Ed 2d 316, 111 S Ct 352.

October 29, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same cases below, 895 F2d 1216.

No. 90-5234. Gerald Smith, Petitioner v Kansas

498 US 943, 112 L Ed 2d 316, 111 S Ct 352.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Kansas denied.

Same case below, 14 Kan App 2d xli, 786 P2d 641.

No. 90-5249. Thomas Dunn, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 943, 112 L Ed 2d 316, 111 S Ct 352.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5257. Elizabeth Baron, Petitioner v United States

498 US 943, 112 L Ed 2d 316, 111 S Ct 352.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1065.

No. 90-5292. Susan Pozzy, Petitioner v United States

498 US 943, 112 L Ed 2d 316, 111 S Ct 353.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 902 F2d 133.

No. 90-5293. Roy C. Green, Petitioner v United States

498 US 943, 112 L Ed 2d 316, 111 S Ct 353.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1311.

No. 90-5322. Willie Lewis Sherman, Petitioner v Burke Contracting, Inc., et al.

498 US 943, 112 L Ed 2d 317, 111 S Ct 353.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 891 F2d 1527.

No. 90-5327. Michael Lancaster, aka Michael McGee, Petitioner v United States

498 US 943, 112 L Ed 2d 317, 111 S Ct 353.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 79, 901 F2d 1131.

No. 90-5332. Raymond Mango, Petitioner v Harry K. Russell, Warden

498 US 943, 112 L Ed 2d 317, 111 S Ct 353.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 33.

No. 90-5399. Peter D. Johnson, Petitioner v Michael V. Neal

498 US 943, 112 L Ed 2d 317, 111 S Ct 354.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5421. Anthony Grandison, Petitioner v Attorney General of the United States, et al.

498 US 943, 112 L Ed 2d 317, 111 S Ct 354.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5442. Kenneth Lee Krause, Petitioner v United States District Court for the District of Nevada (Harol Whitely, Warden, Real Party in Interest)

498 US 943, 112 L Ed 2d 317, 111 S Ct 354.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5452. James Ray, Petitioner v United States Court of Appeals for the District of Columbia

498 US 943, 112 L Ed 2d 318, 111 S Ct 354.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-5457. Bernard Hill, Petitioner v Robert Bowman, State Treasurer of Michigan

498 US 943, 112 L Ed 2d 318, 111 S Ct 354.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Michigan denied.

Same case below, 434 Mich 907.

No. 90-5472. In Re Morris May, Petitioner

498 US 944, 112 L Ed 2d 318, 111 S Ct 354, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 529.

No. 90-5499. Ben Gomez, Petitioner v James Greer, Warden

498 US 944, 112 L Ed 2d 318, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 896 F2d 252.

No. 90-5505. Zachary Herman, Petitioner v United States

498 US 944, 112 L Ed 2d 318, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1580.

No. 90-5514. Henk Visser, Petitioner v United States District Court for the Central District of California

498 US 944, 112 L Ed 2d 318, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5518. Dennis Oliver Fraley, Petitioner v United States District Court for the Northern District of West Virginia, et al.

498 US 944, 112 L Ed 2d 319, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1564.

No. 90-5520. Francis Osi Eluemunoh, Petitioner v United States Immigration and Naturalization Service

498 US 944, 112 L Ed 2d 319, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 703.

No. 90-5529. Eugene Szymanski, Petitioner v United States

498 US 944, 112 L Ed 2d 319, 111 S Ct 355.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 894 F2d 1337.

No. 90-5556. John Robert Demos, Jr., Petitioner v United States District Court for the Western District of Washington

498 US 944, 112 L Ed 2d 319, 111 S Ct 356.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5567. Roosevelt Allen, Jr., Petitioner v Richard L. Stalder, Warden, et al.

498 US 944, 112 L Ed 2d 319, 111 S Ct 356.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 550.

No. 90-5574. Joyce Anne Dabish, Petitioner v Chrysler Corporation

498 US 944, 112 L Ed 2d 319, 111 S Ct 356, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-5575. Thomas C. Kokoraleis, Petitioner v Illinois

498 US 944, 112 L Ed 2d 319, 111 S Ct 356.

October 29, 1990. Petition for writ

of certiorari to the Appellate Court of Illinois, Second District, denied.

Same case below, 193 Ill App 3d 684, 140 Ill Dec 482, 549 NE2d 1354.

No. 90-5577. Michael Sindram, Petitioner v Howard Wallin, et al.

498 US 944, 112 L Ed 2d 320, 111 S Ct 356, reh den 498 US 973, 112 L Ed 2d 426, 111 S Ct 444.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1531.

No. 90-5578. Michael Sindram, Petitioner v J. James McKenna, et al.

498 US 944, 112 L Ed 2d 320, 111 S Ct 356, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1531.

No. 90-5580. Donna Carvalho, Petitioner v Public Employees Federation, et al.

498 US 944, 112 L Ed 2d 320, 111 S Ct 357, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-5582. Vincent Harris, Petitioner v C. M. Grace, et al.

498 US 945, 112 L Ed 2d 320, 111 S Ct 357.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 713.

No. 90-5583. Andrew King, Petitioner v John Whitley, Warden

498 US 945, 112 L Ed 2d 320, 111 S Ct 357.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 903 F2d 825.

No. 90-5585. Taj Jarallah, Petitioner v Pickett Hotel Company, dba Pickett Suite Hotel, et al.

498 US 945, 112 L Ed 2d 320, 111 S Ct 357, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-5587. Robert Francis Hanley, Petitioner v United States

498 US 945, 112 L Ed 2d 321, 111 S Ct 357.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 906 F2d 1116.

No. 90-5588. Maria Consuelo Espinosa, Petitioner v Florida

498 US 945, 112 L Ed 2d 321, 111 S Ct 357.

October 29, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Third District, denied.

Same case below, 561 So 2d 597.

No. 90-5602. Larry Edmond Bell, Petitioner v Oklahoma

498 US 945, 112 L Ed 2d 321, 111 S Ct 358.

October 29, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 90-5603. Lloyd London, Petitioner v Illinois

498 US 945, 112 L Ed 2d 321, 111 S Ct 358.

October 29, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 192 Ill App 3d 1105, 160 Ill Dec 325, 577 NE2d 201.

No. 90-5604. John Robert Demos, Jr., Petitioner v Booth Gardner, et al.

498 US 945, 112 L Ed 2d 321, 111 S Ct 358.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5606. William Schlicher, Petitioner v Steven J. Davies, Secretary, Kansas Department of Corrections, et al.

498 US 945, 112 L Ed 2d 321, 111 S Ct 358, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5608. Katie Whitney, Petitioner v Federal Reserve Bank, et al.

498 US 945, 112 L Ed 2d 321, 111 S Ct 358.

October 29, 1990. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-5609. Edgar Smith, Petitioner v United States District Court for the Southern District of California

498 US 945, 112 L Ed 2d 322, 111 S Ct 358.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5614. Harry A. Coombs, Petitioner v N. L. Chemicals, Inc., et al.

498 US 945, 112 L Ed 2d 322, 111 S Ct 359, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of New Jersey denied.

Same case below, 122 NJ 121, 584 A2d 199.

No. 90-5617. Ramon Flores, Petitioner v Minnesota

498 US 945, 112 L Ed 2d 322, 111 S Ct 359.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 906 F2d 1300.

No. 90-5618. Aladdin Abdal-Rahim, Petitioner v New York City Department of Health, Bureau of Laboratories

498 US 945, 112 L Ed 2d 322, 111 S Ct 359.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-5623. William Walton, Petitioner v Phyllis Fox

498 US 946, 112 L Ed 2d 322, 111 S Ct 359.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Third Appellate District, Wyandot County, denied.

No. 90-5632. Gary Lee McColpin, Petitioner v Robert T. Stephan

498 US 946, 112 L Ed 2d 322, 111 S Ct 359, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 594.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5636. Nicholas V. Fleming, Petitioner v O. L. McCotter, et al.

498 US 946, 112 L Ed 2d 322, 111 S Ct 359.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5637. Curtis Feimster, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1142.

No. 90-5639. Isiah Evans, III, Petitioner v Six Unknown Federal Prison Guards

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-5640. Kevin Cruickshank, Petitioner v Greg Blevins

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-5648. James Roosevelt Smoot, Petitioner v United States

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 365.

No. 90-5650. James Sullivan, Petitioner v Texas

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Texas denied.

No. 90-5651. Robert Roderick, Petitioner v Main-Land Development Consultants, Incorporated

498 US 946, 112 L Ed 2d 323, 111 S Ct 360.

October 29, 1990. Petition for writ of certiorari to the Superior Court of Maine, Oxford County, denied.

No. 90-5653. Laurette Rossman, aka Laurette Tedders, Petitioner v Louis Rossman

498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-5655. Mark McKenzie, Petitioner v California

498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5656. Aaron Holsey, Petitioner v Kathleen S. Green, Warden, et al.

498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 81 Md App 771.

No. 90-5657. Mark Williams, Petitioner v United States

498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5658. Waylon Perry, Petitioner v Dwight Duke, et al.

498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5660. James Watts, Petitioner v James R. Cullinane, et al.

498 US 946, 112 L Ed 2d 324, 111 S Ct 361, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 702.

No. 90-5662. Victoria Phillips, as Guardian of George Phillips, Sr., Petitioner v United States District Court for the Northern District of Texas

498 US 947, 112 L Ed 2d 324, 111 S Ct 361.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5666. Curtis Nathaniel Fowlkes, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 722.

No. 90-5667. Jerl Ferguson, Petitioner v New York

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 154 App Div 2d 706, 546 NYS2d 901.

No. 90-5668. James Deichler, Petitioner v Terry Morris, Superintendent, Southern Ohio Correctional Facility

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 878 F2d 1436.

No. 90-5671. Dana Baker, Petitioner v California

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 220 Cal App 3d 574, 269 Cal Rptr 475.

No. 90-5674. Curtis Nathaniel Fowlkes, Petitioner v Robert Frye, et al.

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1137.

No. 90-5675. Albert Thomas, Petitioner v Georgia Department of Corrections, et al.

498 US 947, 112 L Ed 2d 325, 111 S Ct 362.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-5678. Thomas Greene, Petitioner v New York

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 153 App Div 2d 439, 552 NYS2d 640.

No. 90-5682. William L. Jackson, Petitioner v William Armontrout, Warden

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 510.

No. 90-5683. Joseph C. Merritt, et al., Petitioners v Edwin W. Edwards, Former Governor of Louisiana, et al.

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 148.

No. 90-5685. Dalmiro Eduardo Campuzano and John Jario Rios, Petitioners v United States

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 905 F2d 677.

No. 90-5686. Jaime Leon Gomez-Norena, Petitioner v United States

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 497.

No. 90-5688. Guy Eugene Rich, Petitioner v John Thalacker, Warden

498 US 947, 112 L Ed 2d 326, 111 S Ct 363.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 509.

No. 90-5690. John Anthony Taylor, Petitioner v United States

498 US 948, 112 L Ed 2d 326, 111 S Ct 364.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 702.

No. 90-5694. Andy Nathaniel Payne, Petitioner v Larry W. Huffman, Warden

498 US 948, 112 L Ed 2d 327, 111 S Ct 364.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1139.

No. 90-5697. Salvatore Valenti, et ux., Petitioners v Lancaster County Tax Claim Bureau, et al.

498 US 948, 112 L Ed 2d 327, 111 S Ct 364.

October 29, 1990. Petition for writ of certiorari to the Commonwealth Court of Pennsylvania denied.

Same case below, 129 Pa Cmwlth 664, 565 A2d 869.

No. 90-5699. Michael Sindram, Petitioner v Montgomery County, Maryland, et al.

498 US 948, 112 L Ed 2d 327, 111 S Ct 364, reh den 498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 724.

No. 90-5702. George A. Garcia, Petitioner v United States

498 US 948, 112 L Ed 2d 327, 111 S Ct 364.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 903 F2d 1022.

No. 90-5730. Paul Joseph Clifford, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 948, 112 L Ed 2d 327, 111 S Ct 364.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5743. Alfred Green, Petitioner v United States

498 US 948, 112 L Ed 2d 327, 111 S Ct 365.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 728.

No. 90-5745. John Robert Demos, Jr., Petitioner v Washington

498 US 948, 112 L Ed 2d 328, 111 S Ct 365.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Washington denied.

No. 90-5747. Kinson Celestin, Petitioner v United States

498 US 948, 112 L Ed 2d 328, 111 S Ct 365.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1477.

No. 90-5750. Larnel Webb Lofton, Petitioner v United States

498 US 948, 112 L Ed 2d 328, 111 S Ct 365.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 1315.

No. 90-5751. Jado Kammoma, Petitioner v United States

498 US 948, 112 L Ed 2d 328, 111 S Ct 365.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 1205.

No. 90-5752. Keith D. Long, Petitioner v United States

498 US 948, 112 L Ed 2d 328, 111 S Ct 365.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 405, 905 F2d 1572.

No. 90-5757. Valentin Sifuentes-Balderas, Petitioner v United States

498 US 948, 112 L Ed 2d 328, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 147.

No. 90-5767. Rudy Torres, et ux., Petitioners v United States

498 US 948, 112 L Ed 2d 329, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 1417.

No. 90-5768. Ortelio Bravo, Petitioner v United States

498 US 949, 112 L Ed 2d 329, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1142.

No. 90-5770. Cephus Donald Dyer, Petitioner v United States

498 US 949, 112 L Ed 2d 329, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 910 F2d 530.

No. 90-5773. Carlos Wilson, Petitioner v United States

498 US 949, 112 L Ed 2d 329, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 147.

No. 90-5777. Charles West, Petitioner v United States

498 US 949, 112 L Ed 2d 329, 111 S Ct 366.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-5782. Barnett Smith, Petitioner v United States

498 US 949, 112 L Ed 2d 329, 111 S Ct 367.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-5786. Gary Wayne Hirsch, Petitioner v Oregon

498 US 949, 112 L Ed 2d 329, 111 S Ct 367, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 98 Or App 169, 780 P2d 259.

No. 90-5793. Edward Clark, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 367.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 1541.

No. 90-5797. Derrick Williams, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 367.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 269.

No. 90-5798. Frank Juan Chavez, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 367.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1418.

No. 90-5810. William Taylor, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 367.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 37.

No. 90-5818. James Charles Galloway, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 368.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-5820. Alberto Candeao, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 368.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 90-5821. Charles Dawn, Petitioner v United States

498 US 949, 112 L Ed 2d 330, 111 S Ct 368.

October 29, 1990. Petition for writ

of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1132.

No. 90-5828. Jimmy R. Pettigrew, Petitioner v United States

498 US 949, 112 L Ed 2d 331, 111 S Ct 368.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 151.

No. 90-5829. John Poteat, Petitioner v United States

498 US 949, 112 L Ed 2d 331, 111 S Ct 368.

October 29, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 89-1167. Robert L. Brutsche, Petitioner v Linda Cleveland-Perdue, Successor Representative and Administratrix of the Estate of Joseph Jones, Jr.

498 US 949, 112 L Ed 2d 331, 111 S Ct 368.

October 29, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 881 F2d 427.

No. 90-385. Joseph Henneberry, Director, Patuxent Institution, Petitioner v Richard Lee Sutton

498 US 950, 112 L Ed 2d 331, 111 S Ct 369.

October 29, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 319 Md 634, 574 A2d 898.

No. 90-425. Bill Armontrout, Warden, Petitioner v James W. Chambers

498 US 950, 112 L Ed 2d 331, 111 S Ct 369.

October 29, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 907 F2d 825.

No. 89-1193. B & H Industries of Southwest Florida, Inc., Petitioner v Richard A. Dieter, et al.

498 US 950, 112 L Ed 2d 332, 111 S Ct 369.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied. Justice White would grant certiorari.

Same case below, 880 F2d 322.

No. 89-1738. James A. Lewis, Trustee for Joseph M. Eaton Builders, Inc., Petitioner v Thomas J. Diethorn, et ux.

498 US 950, 112 L Ed 2d 332, 111 S Ct 369.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice White would grant certiorari.

Same case below, 893 F2d 648.

No. 89-1855. St. Joseph's Hospital and Medical Center, Petitioner v Maricopa County

498 US 950, 112 L Ed 2d 332, 111 S Ct 369.

October 29, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied. Justice White would grant certiorari.

Same case below, 163 Ariz 132, 786 P2d 983.

No. 89-1900. General Telephone Company of the Northwest, Inc., Petitioner v Equal Employment Opportunity Commission

498 US 950, 112 L Ed 2d 332, 111 S Ct 370.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White would grant certiorari.

Same case below, 885 F2d 575.

No. 90-225. Sekou Ealy, an Infant, by Robert Ealy, et al., Guardians, Petitioners v Richardson-Merrell, Inc.

498 US 950, 112 L Ed 2d 332, 111 S Ct 370.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice White would grant certiorari.

Same case below, 283 App DC 137, 897 F2d 1159.

No. 89-1499. A. F. Plazzo, et al., Petitioners v Nationwide Mutual Insurance Company, et al.

498 US 950, 112 L Ed 2d 332, 111 S Ct 370.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 892 F2d 79.

No. 89-1580. Timothy Scott Sherman, Petitioner v Maryland

498 US 950, 112 L Ed 2d 333, 111 S Ct 370.

October 29, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 79 Md App 772.

No. 90-5061. William C. Richardson, Petitioner v Warden, Wade Correctional Center, et al.

498 US 951, 112 L Ed 2d 333, 111 S Ct 370.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White and Justice Marshall would grant certiorari.

No. 89-1591. Thomas R. Schwarz, Petitioner v Florida Supreme Court

498 US 951, 112 L Ed 2d 333, 111 S Ct 371.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied. Justice White, Justice Marshall, and Justice Blackmun would grant certiorari.

Same case below, 552 So 2d 1094.

No. 89-1972. James B. Daniels, Petitioner v Superior Court of New Jersey, Appellate Division

498 US 951, 112 L Ed 2d 333, 111 S Ct 371.

October 29, 1990. The motion of Center for Constitutional Rights for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the Supreme Court of New Jersey denied.

Same case below, 118 NJ 51, 570 A2d 416.

No. 89-7684. David Stoker, Petitioner v Texas

498 US 951, 112 L Ed 2d 333, 111 S Ct 371.

October 29, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 788 SW2d 1.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5459. Arthur Tyler, Petitioner v Ohio

498 US 951, 112 L Ed 2d 334, 111 S Ct 371.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 50 Ohio St 3d 24, 553 NE2d 576.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5607. Peter Ventura, Petitioner v Florida

498 US 951, 112 L Ed 2d 334, 111 S Ct 372.

October 29, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 560 So 2d 217.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5859. Raymond Robert Clark, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 951, 112 L Ed 2d 334, 111 S Ct 372.

October 29, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 908.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-228. Massachusetts, Petitioner v Paul R. Couture

498 US 951, 112 L Ed 2d 334, 111 S Ct 372.

October 29, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied. Justice Blackmun would grant certiorari.

Same case below, 407 Mass 178, 552 NE2d 538.

No. 90-307. Thomas A. Coughlin, Commissioner, New York State Department of Correctional Services, et al., Petitioners v Thomas Benjamin, et al.

498 US 951, 112 L Ed 2d 335, 111 S Ct 372.

October 29, 1990. The motion of respondents for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 905 F2d 571.

No. 90-366. David T. Flaherty, Petitioner v Thomas S., by his Guardian ad Litem, Joyce M. Brooks, et al.

498 US 951, 112 L Ed 2d 335, 111 S Ct 373.

October 29, 1990. The motion of respondents for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 250.

No. 90-344. Transwestern Pipeline Company, Petitioner v Kansas Power and Light Company, et al.

No. 90-367. Federal Energy Regulatory Commission, Petitioner v Public Utilities Commission of California, et al.

498 US 952, 112 L Ed 2d 335, 111 S Ct 373.

October 29, 1990. The motion of Interstate Natural Gas Association of America for leave to file a brief as amicus curiae is granted. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same cases below, 283 App DC 116, 897 F2d 570.

No. 90-403. Josephine A. Andes, Petitioner v Theodore R. Knox

498 US 952, 112 L Ed 2d 335, 111 S Ct 373.

October 29, 1990. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 188.

No. 90-417. Alan S. Kramer, Petitioner v Gaines W. Hammond, Jr.

498 US 952, 112 L Ed 2d 335, 111 S Ct 373.

October 29, 1990. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 300 SC 458, 388 SE2d 796.

No. 90-443. Kern River Gas Transmission Company, Petitioner v Coastal Corporation, et al.

498 US 952, 112 L Ed 2d 336, 111 S Ct 374.

October 29, 1990. The motion of Wide World of Maps, Inc. for leave to file a brief as amicus curiae is granted. The motion of Automobile Club of America for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 1458.

No. 90-5778. In Re Grant Anderson, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 374.

October 29, 1990. The petition for writ of habeas corpus is denied.

No. 90-5816. In Re James E. Kirschenhunter, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 374, reh den 498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

October 29, 1990. The petition for writ of habeas corpus is denied.

No. 90-5613. In Re Joe L. Blanton, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 374.

October 29, 1990. The petition for writ of mandamus is denied.

No. 90-5622. In Re Layton Fay, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 374.

October 29, 1990. The petition for writ of mandamus is denied.

No. 90-5625. In Re Henk Visser, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 374.

October 29, 1990. The petition for writ of mandamus is denied.

No. 90-5681. In Re James D. Maciel, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 375.

October 29, 1990. The petition for writ of mandamus is denied.

No. 90-5519. In Re Robert W. Cook, Petitioner

498 US 937, 112 L Ed 2d 336, 111 S Ct 375.

October 29, 1990. The petition for writ of mandamus and/or prohibition is denied.

No. 90-365. In Re Shahsultan Jaffer, Petitioner

498 US 937, 112 L Ed 2d 337, 111 S Ct 375, reh den 498 US 1017, 112 L Ed 2d 597, 111 S Ct 592.

October 29, 1990. The petition for a writ of prohibition and mandamus is denied.

No. 89-6324. William N. Moore, Petitioner v Walter Zant, Superintendent, Georgia Diagnostic and Classification Center

498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

October 29, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 497 US 1010, 111 L Ed 2d 765, 110 S Ct 3255.

No. 90-5108. In Re Juan Puga Cedillo, Petitioner

498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

October 29, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

No. 90-5389. Carolyn Price Chadwick, Petitioner v Acco-Babcock, Inc.

498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

October 29, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 874, 112 L Ed 2d 162, 111 S Ct 200.

No. A-330. Federico Paz, Applicant v Idaho

498 US 952, 112 L Ed 2d 337, 111 S Ct 375.

November 1, 1990. The application for stay of execution of sentence of death, presented to Justice O'Connor, and by her referred to the Court, is granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition for a writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. A-331. Paul Delo, Superintendent, Potosi Correctional Center, Applicant v Maurice Oscar Byrd

498 US 953, 112 L Ed 2d 337, 111 S Ct 376.

November 1, 1990. The application of the Attorney General of Missouri for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit, presented to Justice Kennedy, and by him referred to the Court, is denied.

[498 US 38]

MICHAEL OWEN PERRY, Petitioner

v

LOUISIANA

498 US 38, 112 L Ed 2d 338, 111 S Ct 449, reh den 498 US 1075, 112 L Ed 2d 865, 111 S Ct 804

[No. 89-5120]

Argued October 2, 1990. Decided November 13, 1990.

APPEARANCES OF COUNSEL

Keith B. Nordyke argued the cause for petitioner.
Rene I. Salomon argued the cause for respondent.

PER CURIAM

[498 US 38]

The judgment is vacated and the case is remanded to the 19th Judicial District Court of Louisiana for further consideration in light of Washington v Harper, 494 US 210, 108 L Ed 2d 178, 110 S Ct 1028 (1990).

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

TOMMY CAGE, Petitioner

v

LOUISIANA

498 US 39, 112 L Ed 2d 339, 111 S Ct 328

[No. 89-7302]

Decided November 13, 1990.

Decision: Instruction in Louisiana homicide trial defining "reasonable doubt" in terms of "grave" or "substantial" uncertainty and of need for "moral certainty" held to violate due process clause.

SUMMARY

In a Louisiana trial court, a defendant was convicted of first-degree murder and sentenced to death after the jury was instructed, in part, that it must acquit the defendant if it entertained a reasonable doubt as to any element necessary to constitute his guilt, but that this doubt must be such "as would give rise to a grave uncertainty" and must be "an actual substantial doubt," and that what is required is "a moral certainty." On appeal, the defendant contended that this instruction was improper; but the Supreme Court of Louisiana—while noting that the phrases "grave uncertainty" and "moral certainty," if taken out of context, might overstate the requisite degree of uncertainty and confuse the jury—determined that, taking the instructions as a whole, reasonable persons of ordinary intelligence would understand the definition of reasonable doubt (554 So 2d 39).

Granting leave to proceed in forma pauperis and granting certiorari, the United States Supreme Court reversed the judgment of the Supreme Court of Louisiana and remanded the case for further proceedings. In a per curiam opinion expressing the unanimous view of the court, it was held that the instruction violated the reasonable doubt requirement protected by the due process clause of the Federal Constitution's Fourteenth Amendment, because (1) the words "substantial" and "grave," as they are commonly understood, suggested a higher degree of doubt than was required for acquittal under the reasonable doubt standard, and (2) when those statements were considered with the reference to "moral certainty," rather than evidentiary certainty, it became clear that a reasonable juror could have

interpreted the instructions to allow a finding of guilt based on a degree of proof below that required by the due process clause.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 951, 1692.3; Constitutional Law §§ 840.3, 845 — due process — burden of proof — jury instructions — in forma pauperis proceedings — grant of certiorari — remand

1a-1c. With respect to a state appellate court decision affirming an individual's conviction for first-degree murder, the United States Supreme Court will (1) grant the individual leave to proceed in forma pauperis; (2) grant the individual's petition for a writ of certiorari; and (3) reverse the state appellate court's judgment, and remand the case for further proceedings, on the ground that the state trial court's instruction to the jury explaining the requirement that the individual's guilt be proved beyond a reasonable doubt —which instruction stated in part that a "reasonable" doubt must be such "as would give rise to a grave uncertainty" and must be "an actual

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21A Am Jur 2d, Criminal Law § 782; 75 Am Jur 2d, Trial §§ 756, 827-842

9 Federal Procedure, L Ed, Criminal Procedure §§ 22:859, 22:860

7 Federal Procedural Forms, L Ed, Criminal Procedure § 20:933

8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 358

USCS, Constitution, Amendment 14

US L Ed Digest, Appeal §§ 910.6, 951, 1692.3; Constitutional Law §§ 840.3, 845

Index to Annotations, Due Process; Instructions to Jury; Presumptions and Burden of Proof

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCE

Supreme Court's views as to prejudicial effect in criminal case of erroneous instructions to jury involving burden of proof or presumptions. 92 L Ed 2d 862.

substantial doubt," and that what was required was "a moral certainty"—is invalid under the due process clause of the Federal Constitution's Fourteenth Amendment, because (a) the words "substantial" and "grave," as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard, and (b) when those statements are considered with the reference to "moral certainty," rather than evidentiary certainty, it becomes clear that a reasonable juror could have interpreted the instruction to allow a finding of guilt based on a degree of proof below that required by the due process clause.

Constitutional Law § 840.3 — due process — burden of proof

2. In state criminal trials, the due process clause of the Federal Constitution's Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged.

Appeal § 1258 — principles of review — jury instruction

3. In construing a state trial court's instruction to the jury in a murder trial as to the meaning of the requirement of proof beyond a reasonable doubt, in order to determine whether that instruction met the requirements of the due process clause of the Federal Constitution's Fourteenth Amendment, the United States Supreme Court will consider how reasonable jurors could have understood the charge as a whole.

OPINION OF THE COURT

[498 US 39]

Per Curiam.

[1a] The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted.

[2] In state criminal trials, the Due Process Clause of the Fourteenth Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 US 358, 364, 25 L Ed 2d 368, 90 S Ct 1068 (1970); see also Jackson v Virginia, 443 US 307, 315-316, 61 L Ed 2d 560, 99 S Ct 2781 (1979). This reasonable doubt standard "plays a vital role in the American

[498 US 40]

scheme of criminal procedure." Winship, 397 US, at 363, 25 L Ed 2d 368, 90 S Ct 1068. Among other things, "[i]t is a prime instrument for reducing the risk of convictions resting on factual error." Ibid. The issue before us is whether the reasonable doubt instruction in this case complied with Winship.

Petitioner was convicted in a Louisiana trial court of first-degree murder and was sentenced to death. He appealed to the Supreme Court of Louisiana, arguing, inter alia, that the reasonable doubt instruction used in the guilt phase of his trial was constitutionally defective. The instruction provided in relevant part:

> "If you entertain a reasonable doubt as to any fact or element necessary to constitute the defendant's guilt, it is your duty to give him the benefit of that doubt and return a verdict of not guilty. Even where the evidence demonstrates a probability of guilt, if it does not establish such guilt beyond a reasonable doubt, you must

> acquit the accused. This doubt, however, must be a reasonable one; that is one that is founded upon a real tangible substantial basis and not upon mere caprice and conjecture. *It must be such doubt as would give rise to a grave uncertainty,* raised in your mind by reasons of the unsatisfactory character of the evidence or lack thereof. A reasonable doubt is not a mere possible doubt. *It is an actual substantial doubt.* It is a doubt that a reasonable man can seriously entertain. What is required is not an absolute or mathematical certainty, but a *moral certainty.*" 554 So 2d 39, 41 (La 1989) (emphasis added).

[1b] The Supreme Court of Louisiana rejected petitioner's argument. The court first observed that the use of the phrases "grave uncertainty" and "moral certainty" in the instruction, "if taken out of context, might overstate the requisite degree of uncertainty and confuse the jury." Ibid. But "taking the charge as a whole," the court concluded that "reasonable persons of ordinary intelligence would understand

the definition of 'reasonable doubt.' " Ibid. It is our view, however, that the instruction at issue was contrary to the "beyond a reasonable doubt" requirement articulated in Winship.

[1c, 3] In construing the instruction, we consider how reasonable jurors could have understood the charge as a whole. Francis v Franklin, 471 US 307, 316, 85 L Ed 2d 344, 105 S Ct 1965 (1985). The charge did at one point instruct that to convict, guilt must be found beyond a reasonable doubt; but it then equated a reasonable doubt with a "grave uncertainty" and an "actual substantial doubt," and stated that what was required was a "moral certainty" that the defendant was guilty. It is plain to us that the words "substantial" and "grave," as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard. When those statements are then considered with the reference to "moral certainty," rather than evidentiary certainty, it becomes clear that a reasonable juror could have interpreted the instruction to allow a finding of guilt based on a degree of proof below that required by the Due Process Clause.*

Accordingly, the judgment of the Supreme Court of Louisiana is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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* Similar attempts to define reasonable doubt have been widely criticized by the Federal Courts of Appeals. See, e.g., Monk v Zelez, 901 F2d 885, 889-890 (CA10 1990); United States v Moss, 756 F2d 329, 333 (CA4 1985); United States v Indorato, 628 F2d 711, 720-721 (CA1 1980); United States v Byrd, 352 F2d 570, 575 (CA2 1965); see also Taylor v Kentucky, 436 US 478, 488, 56 L Ed 2d 468, 98 S Ct 1930 (1978).

[498 US 42]

R. DOBIE LANGENKAMP, Successor Trustee of the Bankruptcy Estates of REPUBLIC TRUST & SAVINGS COMPANY and REPUBLIC FINANCIAL CORPORATION, Petitioner

v

C. A. CULP, et al.

498 US 42, 112 L Ed 2d 343, 111 S Ct 330, reh den 498 US 1043, 112 L Ed 2d 709, 111 S Ct 721

[No. 90-93]

Decided November 13, 1990.

Decision: Creditors who have filed claims against bankruptcy estate held not entitled to jury trial under Seventh Amendment when sued by bankruptcy trustee to recover allegedly preferential monetary transfers.

SUMMARY

Two uninsured, nonbank financial institutions doing business in Oklahoma filed bankruptcy petitions under Chapter 11 of the Bankruptcy Code (11 USCS §§ 1101 et seq.). Upon the bankruptcy filing, depositors who, within the 90-day period immediately preceding the filing, had redeemed some, but not all, of their thrift and passbook savings certificates that had been issued by the bankrupts, timely filed claims against the bankruptcy estates. Approximately 1 year after the bankruptcy filings, the successor trustee in bankruptcy instituted, in the United States Bankruptcy Court for the Northern District of Oklahoma, adversary proceedings under 11 USCS § 547(b)—which authorizes a trustee in bankruptcy to avoid any property transfer made by the bankrupt to a creditor of the bankrupt within 90 days before the filing of the bankruptcy petition—to recover, as avoidable preferences, the payments that the depositors, who became creditors of the financial institutions as a result of their bankruptcy filings, had received from the institutions immediately prior to the filing of the bankruptcy petitions. The Bankruptcy Court, on the basis of a bench trial, held that the payments constituted avoidable preferences. After the United States District Court for the Northern District of Oklahoma affirmed the judgment of the Bankruptcy Court, the United States Court of Appeals for the Tenth Circuit, reversing the District Court judgment, held that the creditors were entitled to a jury trial on the trustee's claims because the trustee's actions to recover

the payments made to the creditors were plenary rather than a part of the Bankruptcy Court's proceedings involving the allowance and disallowance of claims (897 F2d 1041).

Granting certiorari, the United States Supreme Court reversed and remanded. In a per curiam opinion expressing the unanimous view of the eight participating members of the court, it was held that, because, by filing the claims against the bankruptcy estate, the creditors had brought themselves within the equity jurisdiction of the Bankruptcy Court, the creditors were not entitled, under the Federal Constitution's Seventh Amendment—which guarantees the right of trial by jury in suits at common law—to a jury trial on the trustee's preference action.

KENNEDY, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

9 Am Jur 2d, Bankruptcy §§ 48, 149; 9A Am Jur 2d, Bankruptcy §§ 542, 544, 547; 47 Am Jur 2d, Jury §§ 7, 8, 31-38

5 Federal Procedure, L Ed, Bankruptcy §§ 9:73, 9:495, 9:498, 9:501; 33 Federal Procedure, L Ed, Trial §§ 77:79, 77:81, 77:84, 77:85

4 Federal Procedural Forms, L Ed, Bankruptcy § 9:79

4 Am Jur Pl & Pr Forms (Rev), Bankruptcy, Form 67; 11A Am Jur Pl & Pr Forms (Rev), Federal Practices and Procedure, Forms 1491-1494; 15 Am Jur Pl & Pr Forms (Rev), Jury, Form 2

USCS, Constitution, Amendment 7; 11 USCS § 547(b)

Bankruptcy Service, L Ed, Summary §§ 2c:94, 2c:173-2c:178; Forms § 71:38

US L Ed Digest, Jury § 9

Index to Annotations, Bankruptcy and Insolvency; Jury and Jury Trial

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Federal constitutional right to jury trial in proceedings involving bankruptcy or receivership—Supreme Court cases. 106 L Ed 2d 652.

Authority of Congress under bankruptcy clause of Federal Constitution (Art I, § 8, cl 4) to legislate on the subject of bankruptcies—Federal cases. 71 L Ed 2d 905.

Supreme Court's construction of Seventh Amendment's guaranty of right to trial by jury. 40 L Ed 2d 846.

Law or equity as proper forum of action or suit by trustee in bankruptcy to recover or avoid preference. 77 L Ed 189.

Complexity of civil action as affecting Seventh Amendment right to trial by jury. 54 ALR Fed 733.

Right to jury trial on issue of dischargeability in bankruptcy as affected by 1970 amendments ("Dischargeability Law") to § 17 of Bankruptcy Act (11 USCS § 35). 18 ALR Fed 789

Right in equity suit to jury trial of counterclaim involving legal issue. 17 ALR3d 1321.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 1677, 1692.3; Jury § 9 — bankruptcy proceedings — right to jury trial — grant of certiorari — reversal — remand

1a-1c. In a case in which the successor trustee of two uninsured, nonbank financial institutions which have filed bankruptcy petitions under Chapter 11 of the Bankruptcy Code (11 USCS §§ 1101 et seq.) institutes adversary proceedings under 11 USCS § 547(b)—which authorizes a trustee in bankruptcy to avoid any property transfer made by the bankrupt to a creditor of the bankrupt within 90 days before the filing of the bankruptcy petition—to recover, as avoidable preferences, the payments that depositors that held thrift and passbook savings certificates issued by the financial institutions had received from the institutions by redeeming some, but not all, of these certificates within the 90-day period immediately preceding the filing of the bankruptcy petitions, the United States Supreme Court will grant a petition for certiorari, reverse a Federal Court of Appeals judgment holding that the creditors are entitled to a jury trial on the preference claims, and remand the case for further proceedings—where the creditors filed claims in a Bankruptcy Court against the bankruptcy estate before the trustee filed the preference claims, and the creditors have not received a jury trial on the preference claims—because the creditors are not entitled, under the Federal Constitution's Seventh Amendment—which guarantees the right of trial by jury in suits at common law—to a jury trial on the trustee's preference action, since, by filing the claims against the bankruptcy estate, the creditors have brought themselves within the equity jurisdiction of the Bankruptcy Court, given that, if a creditor filing such a claim is met, in turn, with a preference action from the trustee in bankruptcy, that action becomes part of the claims-allowance process which is triable only in equity.

Jury § 9 — right to jury trial — bankruptcy proceedings

2a, 2b. A bankrupt's creditor who has not submitted a claim against the bankruptcy estate is entitled to a jury trial under the Federal Constitution's Seventh Amendment—which guarantees the right of trial by jury in suits at common law—with respect to a suit brought against the creditor by the trustee in bankruptcy to recover allegedly preferential monetary transfers made by the bankrupt to the creditor prior to the filing of the bankruptcy petition, because, if a party does not submit a claim against a bankruptcy estate, the trustee in bankruptcy can recover allegedly preferential transfers from the party only by filing what amounts to a legal action to recover a monetary transfer.

OPINION OF THE COURT

Per Curiam.

[1a] This case presents the question whether creditors who submit a claim against a bankruptcy estate and are then sued by

the trustee in bankruptcy to recover allegedly preferential monetary transfers are entitled to jury trial under the Seventh Amendment. This action was brought by petitioner Langenkamp, successor trustee to Republic Trust & Savings Company and Republic Financial Corporation (collectively debtors). Debtors were uninsured, nonbank financial institutions doing business in Oklahoma. Debtors filed Chapter 11 bankruptcy petitions on September 24, 1984. At the time of the bankruptcy filings, respondents held thrift and passbook savings certificates issued by debtors, which represented debtors' promise to repay moneys the respondents had invested.

[2a] Within the 90-day period immediately preceding debtors' Chapter 11 filing, respondents redeemed some, but not all, of debtors' certificates which they held. Thus, upon the bankruptcy filing, respondents became creditors of the now-bankrupt corporations. Respondents timely filed proofs of claim against the bankruptcy estates. Approximately one year after the bankruptcy filing, the trustee instituted adversary proceedings under 11 USC § 547(b) [11 USCS § 547(b)] to recover, as avoidable preferences, the payments which respondents had received immediately prior to the September 24 filing. A bench trial was held, and the Bankruptcy Court found that the money received by respondents did in fact constitute avoidable preferences. In re Republic Trust & Savings Co., No. 84C-01461, Adversary No. 85-0337 (ND Okla, June 26, 1987), App to Pet for Cert. A-45; In re Republic Trust & Savings Co., No. 84-01461, Adversary No. 85-0319 (ND Okla, June 26, 1987), App to Pet for Cert. A-64. The United States District Court for the Northern District of Oklahoma affirmed. Republic Financial Corp. v Langenkamp, Nos. 87-C-616-C, 87-C-618-C, 87-C-619-C (June 30, 1988), App to Pet for Cert. A-67. On appeal, the United States Court of Appeals for the Tenth Circuit upheld the District Court's judgment on three grounds, but reversed on the issue of the holders' entitlement to a jury trial on the trustee's preference claims. In re Republic Trust & Savings Co., 897 F2d 1041 (1990). Relying on our decisions in Granfinanciera, S.A. v Nordberg, 492 US 33, 106 L Ed 2d 26, 109 S Ct 2782 (1989), and Katchen v Landy, 382 US 323, 15 L Ed 2d 391, 86 S Ct 467 (1966), the Tenth Circuit correctly held that "those appellants that did not have or file claims against the debtors' estates undoubtedly [were] entitled to a jury trial on the

[498 US 44]

issue whether the payments they received from the debtors within ninety days of the latter's bankruptcy constitute[d] avoidable preferences." 897 F2d, at 1046. The Court of Appeals went further, however, concluding:

> "[A]lthough some of the appellants did file claims against the estates because they continued to have monies invested in the debtors at the time of bankruptcy, . . . we believe they likewise are entitled to a jury trial under the rationale of Granfinanciera and Katchen. Despite these appellants' claims, the trustee's actions to avoid the transfers, consolidated by the bankruptcy court, were plenary rather than a part of the bankruptcy court's summary proceedings involving the 'process of allowance and disallowance of claims.'" Id., at 1046-1047.

[1b, 2b] Petitioner contends that the Tenth Circuit erred in holding that those creditors of the debtors who had filed claims against the estate were entitled to a jury trial. We agree.

In Granfinanciera we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of "allowance and disallowance of claims," thereby subjecting himself to the bankruptcy court's equitable power. 492 US, at 58-59, and n 14, 106 L Ed 2d 26, 109 S Ct 2782 (citing Katchen, supra, at 336, 15 L Ed 2d 391, 86 S Ct 467). If the creditor is met, in turn, with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. Ibid. In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's *equity jurisdiction*. Granfinanciera, supra, at 57-58, 106 L Ed 2d 26, 109 S Ct 2782. As **[498 US 45]** such, there is no Seventh Amendment right to a jury trial. If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial. 492 US, at 58-59, 106 L Ed 2d 26, 109 S Ct 2782.

[1c] Accordingly, "a creditor's right to a jury trial on a bankruptcy trustee's preference claim depends upon whether the creditor has submitted a claim against the estate." Id., at 58, 106 L Ed 2d 26, 109 S Ct 2782. Respondents filed claims against the bankruptcy estate, thereby bringing themselves within the equitable jurisdiction of the Bankruptcy Court. Consequently, they were not entitled to a jury trial on the trustee's preference action. The decision by the Court of Appeals overlooked the clear distinction which our cases have drawn and in so doing created a conflict among the Circuits on this issue. For this reason we grant the petition for certiorari, reverse the judgment of the Court of Appeals for the Tenth Circuit, and remand for further proceedings consistent with this opinion.

It is so ordered.

Justice **Kennedy** took no part in the consideration or decision of this case.

[498 US 46]

JAY PALMER et al., Petitioners
v
BRG OF GEORGIA, INC., et al.

498 US 46, 112 L Ed 2d 349, 111 S Ct 401

[No. 89-1667]

Decided November 26, 1990.

Decision: Agreement by two providers of bar review courses, which agreement contained mutual covenants not to compete in other provider's market, held violative of § 1 of Sherman Act (15 USCS § 1).

SUMMARY

During the period from 1977 to 1979, a Georgia corporation and a Delaware corporation—which corporation was the nation's largest provider of bar review materials and lecture services—offered bar review courses in Georgia in direct competition with each other. In 1980, the corporations entered into an agreement that gave the Georgia corporation an exclusive license to market the materials of the Delaware corporation and to use the Delaware corporation's tradename, in exchange for payment by the Georgia corporation of specified per-student revenues to the Delaware corporation. The agreement further provided that (1) the Delaware corporation would not compete with the Georgia corporation in Georgia, and (2) the Georgia corporation would not compete with the Delaware corporation outside of Georgia. Immediately after the agreement, the price of the Georgia corporation's course was increased from $150 to over $400. Subsequently, an action was brought in Federal District Court by individuals who had contracted to take the bar review course offered by the Georgia corporation in preparation for the 1985 Georgia bar examination. The individuals alleged that the 1980 agreement between the two corporations violated § 1 of the Sherman Act (15 USCS § 1). The District Court, granting the corporations' motion for summary judgment, held that the agreement did not constitute a per se violation of § 1. The United States Court of Appeals for the Eleventh Circuit, affirming, ruled that the agreement was lawful, insofar as the agreement did not subdivide a market in which the corporations previously had competed (874 F2d 1417, reh en banc den 893 F2d 293).

Granting certiorari, the United States Supreme Court reversed and remanded. In a per curiam opinion expressing the view of Rehnquist, Ch. J., and White, Blackmun, Stevens, O'Connor, Scalia, and Kennedy, JJ., it was held that (1) the agreement into which the two corporations had entered was unlawful on its face as a per se violation of § 1, even though the corporations did not subdivide a market in which they had previously competed; and (2) the District Court's entry of summary judgment in favor of the corporations with respect to the corporations' alleged per se violation of § 1 also was incorrect because the agreement was formed for the purpose and with the effect of raising the price of the Georgia corporation's bar review course, as indicated by both the agreement's revenue-sharing formula and the price increase for the Georgia corporation's bar review course that took place immediately after the corporations agreed to cease competing with each other.

Marshall, J., dissenting, (1) agreed that the limited information before the Supreme Court appeared to indicate that the Court of Appeals had erred in its decision, but (2) expressed the view that summary dispositions deprive litigants of a fair opportunity to be heard on the merits and significantly increase the risk of an erroneous decision.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 1677, 1692.3; Restraints of Trade, Monopolies, and Unfair Trade Practices § 53 — covenants not to compete — market allocation — grant of certiorari — reversal — remand

1a-1d. An agreement entered into by two competing providers of bar review courses in Georgia—one of which providers, a Delaware corporation, was the nation's largest provider of bar review materials and lecture services, and the other of which providers, a Georgia corporation, offered bar review courses in

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54 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 49, 73, 102

24 Federal Procedure, L Ed, Monopolies and Restraints of Trade §§ 54:254, 54:255

12B Federal Procedural Forms, L Ed, Monopolies and Restraints of Trade § 48:211

24 Am Jur Trials 1, Defending Antitrust Lawsuits

15 USCS § 1

US L Ed Digest, Restraints of Trade, Monopolies, and Unfair Trade Practices §§ 37, 53

Index to Annotations, Covenants Not to Compete; Restraints of Trade and Monopolies; Territorial Jurisdiction or Limitations

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views as to what constitutes per se illegal "price fixing" under the Sherman Act (15 USCS §§ 1 et seq.). 64 L Ed 2d 997.

Validity under federal antitrust laws of agreement conferring exclusive sales agency for designated territory. 9 L Ed 2d 1235.

Vertical restraints on sales territory or location as violative of § 1 of Sherman Act (15 USCS § 1)—post-GTE Sylvania cases. 92 ALR Fed 436.

Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 ALR3d 397.

Enforceability of covenant against competition, ancillary to sale or other transfer of business, practice, or property, as affected by territorial extent of restriction. 46 ALR2d 119.

Georgia only—is unlawful on its face as a per se violation of § 1 of the Sherman Act (15 USCS § 1), where such agreement states that (1) the Delaware corporation agrees not to compete with the Georgia corporation in Georgia, and (2) the Georgia corporation agrees not to compete with the Delaware corporation outside of Georgia; under such circumstances, the United States Supreme Court will grant certiorari, reverse a Federal Court of Appeals decision, and remand the case for further proceedings where the Court of Appeals ruled that such agreement—insofar as the agreement did not subdivide a market in which the corporations had previously competed—was lawful. (Marshall, J., dissented in part from this holding.)

Restraints of Trade, Monopolies, and Unfair Trade Practices § 37; Summary Judgment and Judgment on Pleadings § 5 — determination of summary judgment motion — agreement to raise prices

2. In an action alleging a violation of § 1 of the Sherman Act (15 USCS § 1), a Federal District Court's entry of summary judgment in favor of the defendants—one of which, a Delaware corporation, was the nation's largest provider of bar review materials and lecture services, and the other of which, a Georgia corporation, provided bar review courses in Georgia only—is incorrect, where an agreement entered into by the corporations while in competition with each other in Georgia—which agreement (1) gave the Georgia corporation an exclusive license to market the Delaware corporation's materials and to use its tradename, in exchange for payment by the Georgia corporation of specified per-student revenues to the Delaware corporation, and (2) stated that the Delaware corporation would not compete with the Georgia corporation in Georgia and that the Georgia corporation would not compete with the Delaware corporation outside of Georgia—was formed for the purpose and with the effect of raising the price of the Georgia corporation's bar review course, as indicated by both the agreement's revenue-sharing formula and a price increase for the Georgia corporation's bar review course that took place immediately after the corporations agreed to cease competing with each other.

Restraints of Trade, Monopolies, and Unfair Trade Practices § 53 — covenants not to compete — territorial limitations

3. Agreements by each of two parties not to compete in the other's territory are per se violations of § 1 of the Sherman Act (15 USCS § 1), and such agreements are anticompetitive regardless of whether the parties split a market within which both do business or whether they merely reserve one market for one and another for the other.

OPINION OF THE COURT

Per Curiam.

[1a] In preparation for the 1985 Georgia Bar Examination, petitioners contracted to take a bar review course offered by respondent BRG of

Georgia, Inc. (BRG). In this litigation they contend that the price of BRG's course was enhanced by reason of an unlawful agreement between BRG and respondent Harcourt Brace Jovanovich Legal and Professional Publications (HBJ), the Nation's largest provider of bar review

materials and lecture services. The central issue is whether the 1980 agreement between respondents violated § 1 of the Sherman Act.[1]

HBJ began offering a Georgia bar review course on a limited basis in 1976, and was in direct, and often intense, competition with BRG during the period from 1977 to 1979. BRG and HBJ were the two main providers of bar review courses in Georgia during this time period. In early 1980, they entered into an agreement that gave BRG an exclusive license to market HBJ's material in Georgia and to use its trade name "Bar/Bri." The parties agreed that HBJ would not compete with BRG in Georgia and that BRG would not compete with HBJ outside of Georgia.[2] Under the agreement, HBJ received $100 per student enrolled by BRG and 40% of all revenues over $350. Immediately after the 1980 agreement, the price of BRG's course was increased from $150 to over $400.

On petitioners' motion for partial summary judgment as to the § 1 counts in the complaint and respondents' motion for summary judgment, the District Court held that the agreement

was lawful. The United States Court of Appeals for the Eleventh Circuit, with one judge dissenting, agreed with the District Court that per se unlawful horizontal price fixing required an explicit agreement on prices to be charged or that one party have the right to be consulted about the other's prices. The Court of Appeals also agreed with the District Court that to prove a per se violation under a geographic market allocation theory, petitioners had to show that respondents had subdivided some relevant market in which they had previously competed. 874 F2d 1417 (1989).[3] The Court of Appeals denied a petition for rehearing en banc that had been supported by the United States. 893 F2d 293 (1990).[4]

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[1] Section 1 of the Sherman Act, 26 Stat 209, as amended and set forth in 15 USC § 1 [15 USCS § 1], provides in relevant part:
"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."
We do not reach the other claims alleged in petitioners' nine-count complaint, including violations of § 2 of the Sherman Act, 15 USC § 2 [15 USCS § 2].

[2] The 1980 agreement contained two provisions, one called a "Covenant Not to Compete" and the other called "Other Ventures." The former required HBJ not to "directly or indirectly own, manage, operate, join, invest, control, or participate in or be connected as an officer, employee, partner, director, independent contractor or otherwise with any business which is operating or participating in the preparation of candidates for the Georgia State Bar Examination." Plaintiffs' Motion for Partial Summary Judgment, Attachment E, p 10. The latter required BRG not to compete against HBJ in States in which HBJ currently operated outside the State of Georgia. Id., at 15.

[3] In dissent, Judge Clark explained that in his view HBJ and BRG were capable of engaging in per se horizontal restraints because they had competed against each other and then had joined forces. He believed the District Court's analysis was flawed because it had failed to recognize that the agreements could be price-fixing agreements even without explicit reference to price and because it had failed to recognize that allocation, rather than subdivision, of markets could also constitute a per se antitrust violation.

In United States v Socony-Vacuum Oil Co. 310 US 150, 84 L Ed 1129, 60 S Ct 811 (1940), we held that an agreement among competitors to engage in a program of buying surplus gasoline on the spot market in order to prevent prices from falling sharply was unlawful, even though there was no direct agreement on the actual prices to be maintained. We explained that "[u]nder the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se." Id., at 223, 84 L Ed 1129, 60 S Ct 811. See also Catalano, Inc. v Target Sales, Inc. 446 US 643, 64 L Ed 2d 580, 100 S Ct 1925 (1980) (per curiam); National Society of Professional Engineers v United States, 435 US 679, 55 L Ed 2d 637, 98 S Ct 1355 (1978).

[1b, 2] The revenue-sharing formula in the 1980 agreement between BRG and HBJ, coupled with the price increase that took place immediately after the parties agreed to cease competing with each other in 1980, indicates that this agreement was "formed for the purpose and with the effect of raising" the price of the bar review course. It was, therefore, plainly incorrect for the District Court to enter summary judgment in respondents' favor.[5] Moreover, it is equally clear that the District Court and the Court of Appeals erred when they assumed that an allocation of markets or submarkets by competitors is not unlawful unless the market in which the two previously competed is divided between them.

[1c, 3]In United States v Topco Associates, Inc. 405 US 596, 31 L Ed 2d 515, 92 S Ct 1126 (1972), we held that agreements between competitors to allocate territories to minimize competition are illegal:

> "One of the classic examples of a per se violation of § 1 is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. . . . This Court has reiterated time and time again that '[h]orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' Such limitations are per se violations of the Sherman Act." Id., at 608, 31 L Ed 2d 515, 92 S Ct 1126 (citations omitted).

The defendants in Topco had never competed in the same market, but had simply agreed to allocate markets. Here, HBJ and BRG had previously competed in the Georgia market; under their allocation agreement, BRG received that market, while HBJ received the remainder of the United States. Each agreed not to compete in the other's territories. Such agreements are anticompetitive regardless of whether the parties split a market within which both do business

or whether they merely reserve one market for one and another for the other.[6] Thus, the 1980 agreement between HBJ and BRG was unlawful on its face.

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[4] The United States, as amicus curiae, had urged the court to adopt the views of the dissent.

[5] See Anderson v Liberty Lobby, Inc. 477 US 242, 255, 91 L Ed 2d 202, 106 S Ct 2505 (1986) ("The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor").

[1d] The petition for a writ of certiorari is granted, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.[7]

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice **Marshall,** dissenting.

Although I agree that the limited information before us appears to indicate that the Court of Appeals erred in its decision below, I continue to believe that summary dispositions deprive litigants of a fair opportunity to be heard on the merits and significantly increase the risk of an erroneous decision. See Smith v Ohio, 494 US 541, 544, 108 L Ed 2d 464, 110 S Ct 1288 (1990) (Marshall, J., dissenting); Pennsylvania v Bruder, 488 US 9, 11-12, 102 L Ed 2d 172, 109 S Ct 205 (1988) (Marshall, J., dissenting); Rhodes v Stewart, 488 US 1, 4-5, 102 L Ed 2d 1, 109 S Ct 202 (1988) (Marshall, J., dissenting); Buchanan v Stanships, Inc. 485 US 265, 269-270, 99 L Ed 2d 289, 108 S Ct 1130 (1988)

(Marshall, J., dissenting); Commissioner v McCoy, 484 US 3, 7-8, 98 L Ed 2d 2, 108 S Ct 217 (1987) (Marshall, J., dissenting). I therefore dissent from the Court's decision today to reverse summarily the judgment below.

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[6] See Arizona v Maricopa County Medical Society, 457 US 332, 344, n 15, 73 L Ed 2d 48, 102 S Ct 2466 (1982) ("division of markets" is per se offense).

[7] In 1982, in connection with the settlement of another lawsuit, respondents made certain changes in their arrangement. Because the District Court found that the 1980 agreement did not violate § 1 of the Sherman Act, it did not address whether the 1982 modified agreement constituted a withdrawal from, or abandonment of, the conspiracy. In United States v Kissel, 218 US 601, 54 L Ed 1168, 31 S Ct 124 (1910), we held that antitrust conspiracies may continue in time beyond the original conspiratorial agreement until either the conspiracy's objectives are abandoned or succeed. Id., at 608-609, 54 L Ed 1168, 31 S Ct 124. Thus, it is an unsettled factual issue whether the conspiratorial objectives manifest in the 1980 agreement between HBJ and BRG have continued in spite of the 1982 modifications.

[498 US 52]

FMC CORPORATION, Petitioner

v

CYNTHIA ANN HOLLIDAY

498 US 52, 112 L Ed 2d 356, 111 S Ct 403

[No. 89-1048]

Argued October 2, 1990. Decided November 27, 1990.

Decision: Application of state statute, prohibiting exercise of subrogation rights on tort recovery, to employee welfare benefit plan held pre-empted by ERISA (29 USCS §§ 1001 et seq.).

SUMMARY

Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 USCS § 1144(a)), states that except as provided by § 514(b), ERISA supersedes all state laws insofar as they may relate to any employee benefit plan. Section 514(b) contains a "saving clause" (29 USCS § 1144(b)(2)(A)), which reserves to the states the power to enforce state laws regulating insurance, and a "deemer clause" (29 USCS § 1144(b)(2)(B)), which provides that an employee benefit plan governed by ERISA shall not be deemed an insurance company, an insurer, or engaged in the business of insurance for the purposes of any state law purporting to regulate insurance companies or insurance contracts. A Pennsylvania statute provides that in actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to benefits payable under any program, group contract, or other arrangement for the payment of benefits. The daughter of an employee covered by an employee welfare benefit plan was injured in an automobile accident, and the plan paid a portion of her medical expenses. The plan was self-funded and did not purchase any insurance policy to satisfy its obligations. The provisions of the plan included a subrogation clause under which a plan member agreed to reimburse the plan for benefits paid if the member recovered on a liability claim against a third party. The employee brought a negligence action in Pennsylvania state court against the driver of the automobile in which his daughter was injured. The claim was settled. While the action was pending, the employer notified the employee that it would

Briefs of Counsel, p 1223, infra.

seek reimbursement for the amounts the plan had paid for his daughter's medical expenses. The employee and his daughter contended that the Pennsylvania statute precluded such reimbursement. The employee's daughter filed a diversity action in the United States District Court for the Western District of Pennsylvania and obtained a declaratory judgment that the Pennsylvania statute prohibited the employer's exercise of subrogation rights. On appeal, the United States Court of Appeals for the Third Circuit affirmed, holding that (1) the Pennsylvania statute, unless pre-empted, barred the employer from enforcing the plan's subrogation provision; and (2) ERISA did not pre-empt the Pennsylvania statute, inasmuch as ERISA's deemer clause (a) was meant mainly to reach back-door attempts by states to regulate core ERISA concerns in the guise of insurance regulation, and (b) did not exempt the employer's plan from state subrogation laws (885 F2d 79).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by O'Connor, J., joined by Rehnquist, Ch. J., and White, Marshall, Blackmun, Scalia, and Kennedy, JJ., it was held that ERISA pre-empted the application of the Pennsylvania statute to the employer's plan, because (1) the Pennsylvania statute "relate[s] to" an employee benefit plan within the meaning of § 514(a) of ERISA, inasmuch as (a) the Pennsylvania statute has a reference to benefit plans governed by ERISA, and (b) it also has a connection to ERISA benefit plans; (2) although the Pennsylvania statute falls within ERISA's saving clause permitting states to regulate insurance except as provided by the deemer clause, the deemer clause, by forbidding states to deem an employee benefit plan to be an insurance company, an insurer, or engaged in the business of insurance, exempts self-funded ERISA plans from state laws regulating insurance, although plans that are insured are subject to indirect state insurance regulation insofar as such regulation applies to the plans' insurers; and (3) interpretations of the deemer clause as excepting from the saving clause only state insurance regulations that are pretexts for impinging upon core ERISA concerns, or only state statutes that apply to insurance as a business, are not supported by ERISA's language.

Stevens, J., dissented, expressing the view that (1) while ERISA's saving clause exempts from pre-emption all state laws that have the broad effect of regulating insurance, the deemer clause allows pre-emption of only those state laws that expressly regulate insurance; and (2) the Pennsylvania statute fits into the broader category of laws that fall within the saving clause only.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Courts § 775; Pensions and Retirement Funds § 1; States, Territories, and Possessions § 46; Statutes § 91 — state law prohibiting subrogation — preemption by ERISA — consistency with prior decision — congressional intent

1a-1g. The application of a state statute—which statute provides that in actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to benefits payable under any program, group contract, or other arrangement for the payment of benefits—to a self-funded employee welfare benefit plan, which provides for reimbursement for benefits paid to a plan member if the member recovers on a

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60A Am Jur 2d, Pensions and Retirement Funds §§ 115, 118, 124, 130

Federal Procedure, L Ed, Declaratory Judgments § 23:41

29 USCS §§ 1144(a), 1144(b)(2)(A), 1144(b)(2)(B)

RIA Employment Coordinator ¶¶ B-10,715—B-10,718

RIA Pension Coordinator ¶¶ 80,120-80,123

US L Ed Digest, Pensions and Retirement Funds § 1; States, Territories, and Possessions §§ 38, 46

Index to Annotations, Employee Retirement Income Security Act; Insurance and Insurance Companies; Pre-emption; States

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 USCS §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)). 87 ALR Fed 797.

Pre-emption of state fair employment laws under provisions of § 514 of Employee Retirement Income Security Act (29 USCS § 1144). 72 ALR Fed 489.

Federal question jurisdiction in declaratory judgment suit challenging state statute or regulation on grounds of federal pre-emption. 69 ALR Fed 753.

claim in a liability action against a third party, is pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA) (29 USCS §§ 1001 et seq.), because (1) § 514(a) of ERISA (29 USCS § 1144(a)) states that except as provided by § 514(b), ERISA supersedes all state laws insofar as they may relate to any employee benefit plan; (2) the state statute relates to an employee benefit plan, inasmuch as a law relates to an employee benefit plan if it has a connection with or reference to such a plan, and the state statute (a) has a reference to benefit plans covered by ERISA, and (b) also has a connection to ERISA benefit plans, because it (i) prohibits plans from being structured so as to require reimbursement in the event of recovery from a third party, and (ii) requires plan providers in that state to calculate benefit levels based on expected liability conditions that differ from those in states that have not enacted similar legislation; (3) application of different state subrogation laws to plans would frustrate plan administrators' continuing obligation to calculate uniform benefit levels nationwide; (4) although the state statute falls within the saving clause of § 514(b)(2)(A) of ERISA (29 USCS § 1144(b)(2)(A)), permitting states to regulate insurance except as provided by ERISA's deemer clause (29 USCS § 1144(b)(2)(B)), the deemer clause, by forbidding states to deem an employee benefit plan to be an insurance company, an insurer, or engaged in the business of insurance, exempts self-funded ERISA plans from state laws regulating insurance, although plans that are insured are subject to indirect state insurance regulation insofar as such regulation applies to the plan's insurer; (5) this reading of the deemer clause (a) is consistent with a prior Supreme Court decision under ERISA which distinguished between insured plans and self-funded plans, and left the former, but not the latter, open to indirect state regulation, (b) is respectful of the presumption that Congress does not intend to pre-empt areas of traditional state regulation, and (c) protects employers from conflicting or inconsistent state and local regulation of employee benefit plans; and (6) interpretations of the deemer clause as excepting from the saving clause only state insurance regulations that are pretexts for impinging upon core ERISA concerns, or only state statutes that apply to insurance as a business, are not supported by ERISA's language, would be fraught with administrative difficulties, and would, contrary to congressional intent, lead to the expenditure of plan funds in litigation to define core ERISA concerns and what constitutes business activity. (Stevens, J., dissented from this holding.)

States, Territories, and Possessions § 22; Statutes § 164 — pre-emption of state law — congressional intent — language used

2. In determining whether federal law pre-empts a state statute, the United States Supreme Court looks to congressional intent; the court begins with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.

States, Territories, and Possessions § 21 — federal law — express or implied pre-emption

3. Federal pre-emption of a state

statute may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.

Pensions and Retirement Funds § 1; States, Territories, and Possessions § 38; Statutes § 110 — employee benefit plans — state laws — pre-emption by ERISA — other provisions of statute

4. The words "relate to" in § 514(a) of the Employee Retirement Income Security Act (ERISA) (29 USCS § 1144(a))—which states that, except as provided by § 514(b) (29 USCS § 1144(b)), the provisions of ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan"—are used in their broad sense, and do not mean to pre-empt only state laws specifically designed to affect employee benefit plans, as that interpretation would have made it unnecessary for Congress to enact § 514(b)(4) of ERISA (29 USCS § 1144(b)(4)), which exempts from pre-emption generally applicable criminal laws of a state.

Pensions and Retirement Funds § 1; States, Territories, and Possessions § 38 — pension plan regulation — federal pre-emption

5. The Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.) is intended to establish pension plan regulation as exclusively a federal concern.

SYLLABUS BY REPORTER OF DECISIONS

After petitioner FMC Corporation's self-funded health care plan (Plan) paid a portion of respondent's medical expenses resulting from an automobile accident, FMC informed respondent that it would seek reimbursement under the Plan's subrogation provision from any recovery she realized in her Pennsylvania negligence action against the driver of the vehicle in which she was injured. Respondent obtained a declaratory judgment in Federal District Court that § 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law—which precludes reimbursement from a claimant's tort recovery for benefit payments by a program, group contract, or other arrangement—prohibits FMC's exercise of subrogation rights. The Court of Appeals affirmed, holding that the Employee Retirement Income Security Act of 1974 (ERISA), which applies to employee welfare benefit plans such as FMC's, does not pre-empt § 1720.

Held: ERISA pre-empts the application of § 1720 to FMC's Plan.

(a) ERISA's pre-emption clause broadly establishes as an area of exclusive federal concern the subject of every state law that "relate[s] to" a covered employee benefit plan. Although the statute's saving clause returns to the States the power to enforce those state laws that "regulat[e] insurance," the deemer clause provides that a covered plan shall not be "deemed to be an insurance company or other insurer . . . or to be engaged in the business of insurance" for purposes of state laws "purporting to regulate" insurance companies or insurance contracts.

(b) Section 1720 "relate[s] to" an employee benefit plan within the meaning of ERISA's pre-emption provision, since it has both a "connection with" and a "reference to" such a plan. See Shaw v Delta Air Lines, Inc. 463 US 85, 96-97, 77 L Ed 2d 490, 103 S Ct 2890. Moreover, although there is no dispute that § 1720 "regulates insurance," ERISA's deemer clause demonstrates Congress' clear intent to exclude from the reach of the saving clause self-funded ERISA plans by relieving them from state laws "purporting to regulate insurance." Thus, such plans are exempt from state regulation insofar as it "relates to" them. State laws directed toward such plans are pre-empted because they relate to an employee benefit plan but are not "saved" because they do not regulate insurance. State laws that directly regulate insurance are "saved" but do not reach self-funded plans because the plans may not be deemed to be insurance companies, other insurers, or engaged in the business of insurance for purposes of such laws. On the other hand, plans that are insured are subject to indirect state insurance regulation insofar as state laws "purporting to regulate insurance" apply to the plans' insurers and the insurers' insurance contracts. This reading of the deemer clause is consistent with Metropolitan Life Ins. Co. v Massachusetts, 471 US 724, 735, n 14, 747, 85 L Ed 2d 728, 105 S Ct 2380, and is respectful of the presumption that Congress does not intend to pre-empt areas of traditional state regulation, see Jones v Rath Packing Co. 430 US 519, 525, 51 L Ed 2d 604, 97 S Ct 1305, including regulation of the "business of insurance," see Metropolitan Life Ins. Co. v Massachusetts, supra, at 742-744, 85 L Ed 2d 728, 105 S Ct 2380. Narrower readings of the deemer clause—which would interpret the clause to except from the saving clause only state insurance regulations that are pretexts for impinging on core ERISA concerns or to preclude States from deeming plans to be insurers only for purposes of state laws that apply to insurance as a business, such as laws relating to licensing and capitalization requirements—are unsupported by ERISA's language and would be fraught with administrative difficulties, necessitating definition of core ERISA concerns and of what constitutes business activity, and thereby undermining Congress' expressed desire to avoid endless litigation over the validity of state action and requiring plans to expend funds in such litigation.

885 F2d 79, vacated and remanded.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C.J., and White, Marshall, Blackmun, Scalia, and Kennedy, JJ., joined. Stevens, J., filed a dissenting opinion. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

H. Woodruff Turner argued the cause for petitioner.

David L. Shapiro argued the cause for the United States as amicus curiae, in support of petitioner, by special leave of court.

Charles Rothfeld argued the cause for respondent.

Briefs of Counsel, p 1223, infra.

OPINION OF THE COURT

Justice **O'Connor** delivered the opinion of the Court.

[1a] This case calls upon the Court to decide whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat 829, as amended, 29 USC § 1001 et seq. [29 USCS §§ 1001 et seq.], pre-empts a Pennsylvania law precluding employee welfare benefit plans from exercising subrogation rights on a claimant's tort recovery.

I

Petitioner, FMC Corporation (FMC), operates the FMC Salaried Health Care Plan (Plan), an employee welfare benefit plan within the meaning of ERISA, § 3(1), 29 USC § 1002(1) [29 USCS § 1002(1)], that provides health benefits to FMC employees and their dependents. The Plan is self-funded; it does not purchase an insurance policy from any insurance company in order to satisfy its obligations to its participants. Among its provisions is a subrogation clause under which a Plan member agrees to reimburse the Plan for benefits paid if the member recovers on a claim in a liability action against a third party.

Respondent, Cynthia Ann Holliday, is the daughter of FMC employee and Plan member Gerald Holliday. In 1987,

she was seriously injured in an automobile accident. The Plan paid a portion of her medical expenses. Gerald Holliday brought a negligence action on behalf of his daughter in Pennsylvania state court against the driver of the automobile in which she was injured. The parties settled the claim. While the action was pending, FMC notified the Hollidays that it would seek reimbursement for the amounts it had paid for respondent's medical expenses. The Hollidays replied that they would not reimburse the Plan, asserting that § 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law, 75 Pa Cons Stat § 1720 (1987), precludes subrogation by FMC. Section 1720 states that "[i]n actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to . . . benefits . . . payable under section 1719."[1] Section 1719 refers to benefit payments by "[a]ny program, group contract or other arrangement."[2]

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[1] Section 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law is entitled "[s]ubrogation" and provides:

"In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under section 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits) or benefits in lieu thereof paid or payable under section 1719 (relating to coordination of benefits)."

[2] Section 1719, entitled "[c]oordination of benefits," reads:

"(a) General rule.—Except for workers' compensation, a policy of insurance issued or delivered pursuant to this subchapter shall be primary. Any program, group contract or other arrangement for payment of benefits such as described in section 1711 (relating to required benefits), 1712(1) and (2) (relating to availability of benefits) or 1715 (relating to availability of adequate limits) shall be construed to contain a provision that all benefits provided therein shall be in excess of and not in duplication of any valid and collectible first party benefits provided in section 1711, 1712 or 1715 or workers' compensation.

Petitioner, proceeding in diversity, then sought a declaratory judgment in Federal District Court. The court granted respondent's motion for summary judgment, holding that § 1720 prohibits FMC's exercise of subrogation rights on Holliday's claim against the driver. The United States Court of Appeals for the Third Circuit affirmed. 885 F2d 79 (1989). The court held that § 1720, unless pre-empted, bars FMC from enforcing its contractual subrogation provision. According to the court, ERISA pre-empts § 1720 if ERISA's "deemer clause," § 514(b)(2)(B), 29 USC § 1144(b)(2)(B) [29 USCS § 1144(b)(2)(B)], exempts the Plan from state subrogation laws. The Court of Appeals, citing Northern Group Services, Inc. v Auto Owners Ins. Co. 833 F2d 85, 91-94 (CA6 1987), cert denied, 486 US 1017, 100 L Ed 2d 216, 108 S Ct 1754 (1988), determined that "the deemer clause [was] meant mainly to reach backdoor attempts by states to regulate core ERISA concerns in the guise of insurance regulation." 885 F2d, at 86. Pointing out that the parties had not suggested that the Pennsylvania antisubrogation law addressed "a core type of ERISA matter which Congress sought to protect by the preemption provision," id., at 90, the court concluded that the Pennsylvania law is not preempted. The Third Circuit's holding conflicts with decisions of other Courts of Appeals that have construed ERISA's deemer clause to protect self-funded plans from all state insurance regulation. See, e. g., Baxter v Lynn, 886 F2d 182, 186 (CA8 1989); Reilly v Blue Cross and Blue Shield United of Wisconsin, 846 F2d 416, 425-426 (CA7), cert denied, 488 US 856, 102 L Ed 2d 117, 109 S Ct 145 (1988). We granted certiorari to resolve this conflict, 493 US 1068, 107 L Ed 2d 1017, 110 S Ct 1109 (1990), and now reverse.

II

[1b, 2, 3] In determining whether federal law pre-empts a state statute, we look to congressional intent. " 'Pre-emption may be either express or implied, and "is compelled whether Congress'

command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." ' " Shaw v Delta Air Lines, Inc. 463 US 85, 95, 77 L Ed 2d 490, 103 S Ct 2890 (1983) (quoting Fidelity Federal Savings & Loan Assn. v De la Cuesta, 458 US 141, 152-153, 73 L Ed 2d 664, 102 S Ct 3014 (1982), in turn quoting Jones v Rath Packing Co. 430 US 519, 525, 51 L Ed 2d 604, 97 S Ct 1305 (1977)); see also Chevron USA Inc. v Natural Resources Defense Council, Inc. 467 US 837, 842-843, 81 L Ed 2d 694, 104 S Ct 2778 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court . . . must give effect to the unambiguously expressed intent of Congress" (footnote omitted)). We "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." Park 'N Fly, Inc. v Dollar Park and Fly, Inc. 469 US 189, 194, 83 L Ed 2d 582, 105 S Ct 658 (1985). Three provisions of ERISA speak expressly to the question of pre-emption:

"(b) Definition.—As used in this section the term 'program, group contract or other arrangement' includes, but is not limited to, benefits payable by a hospital plan corporation or a professional health service corporation subject to 40 Pa CS Ch 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations)."

> "Except as provided in subsection (b) of this section [the saving clause], the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." § 514(a), as set forth in 29 USC § 1144(a) [29 USCS § 1144(a)] (pre-emption clause).
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> "Except as provided in subparagraph (B) [the deemer clause], nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." § 514(b)(2)(A), as set forth in 29 USC § 1144(b)(2)(A) [29 USCS § 1144(b)(2)(A)] (saving clause).
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> "Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or
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> investment companies." § 514(b)(2)(B), 29 USC § 1144(b)(2)(B) [29 USCS § 1144(b)(2)(B)] (deemer clause).

[1c] We indicated in Metropolitan Life Ins. Co. v Massachusetts, 471 US 724, 85 L Ed 2d 728, 105 S Ct 2380 (1985), that these provisions "are not a model of legislative drafting." Id., at 739, 85 L Ed 2d 728, 105 S Ct 2380. Their operation is nevertheless discernible. The pre-emption clause is conspicuous for its breadth. It establishes as an area of exclusive federal concern the subject of every state law that "relate[s] to" an employee benefit plan governed by ERISA. The saving clause returns to the States the power to enforce those state laws that "regulat[e] insurance," except as provided in the deemer clause. Under the deemer clause, an employee benefit plan governed by ERISA shall not be "deemed" an insurance company, an insurer, or engaged in the business of insurance for purposes of state laws "purporting to regulate" insurance companies or insurance contracts.

III

[1d, 4] Pennsylvania's antisubrogation law "relate[s] to" an employee benefit plan. We made clear in Shaw v Delta Air Lines, supra, that a law relates to an employee welfare plan if it has "a connection with or reference to such a plan." Id., at 96-97, 77 L Ed 2d 490, 103 S Ct 2890 (footnote omitted). We based our reading in part on the plain language of the statute. Congress used the words " 'relate to' in § 514(a) [the pre-emption clause] in their broad sense." Id., at 98, 77 L Ed 2d 490, 103 S Ct 2890. It did not mean to pre-empt only state laws specifically designed to affect employee benefit plans. That interpretation would have made it unnecessary for Congress to enact ERISA § 514(b)(4), 29 USC § 1144(b)(4) [29 USCS § 1144(b)(4)], which exempts from pre-emption "generally" applicable criminal laws of a State. We also emphasized that to interpret the pre-emption clause to apply only to state laws dealing with the subject matters covered by ERISA, such as reporting, disclosure, and fiduciary duties, would be incompatible with the provision's legislative history because the House and

Senate versions of the bill that became ERISA [498 US 59] contained limited pre-emption clauses, applicable only to state laws relating to specific subjects covered by ERISA.[3] These were rejected in favor of the present language in the Act, "indicat[ing] that the section's pre-emptive scope was as broad as its language." Shaw v Delta Air Lines, 463 US, at 98, 77 L Ed 2d 490, 103 S Ct 2890.

[1e] Pennsylvania's antisubrogation law has a "reference" to benefit plans governed by ERISA. The statute states that "[i]n actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to . . . benefits . . . paid or payable under section 1719." 75 Pa Cons Stat § 1720 (1987). Section 1719 refers to "[a]ny program, group contract or other arrangement for payment of benefits." These terms "includ[e], *but [are] not limited to,* benefits payable by a hospital plan corporation or a professional health service corporation." § 1719 (emphasis added).

The Pennsylvania statute also has a "connection" to ERISA benefit plans. In the past, we have not hesitated to apply ERISA's pre-emption clause to state laws that risk subjecting plan administrators to conflicting state regulations. See, e.g., Shaw v Delta Air Lines, supra, at 95-100, 77 L Ed 2d 490, 103 S Ct 2890 (state laws making unlawful plan provisions that discriminate on the basis of pregnancy and requiring plans to provide specific benefits "relate to" benefit plans); Alessi v Raybestos-Manhattan, [498 US 60] Inc. 451 US 504, 523-526, 68 L Ed 2d 402, 101 S Ct 1895 (1981) (state law prohibiting plans from reducing benefits by amount of workers' compensation awards "relate[s] to" employee benefit plan). To require plan providers to design their programs in an environment of differing state regulations would complicate the administration of nationwide plans, producing inefficiencies that employers might offset with decreased benefits. See Fort Halifax Packing Co. v Coyne, 482 US 1, 10, 96 L Ed 2d 1, 107 S Ct 2211 (1987). Thus, where a "patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation," we have applied the pre-emption clause to ensure that benefit plans will be governed by only a single set of regulations. Id., at 11, 96 L Ed 2d 1, 107 S Ct 2211.

Pennsylvania's antisubrogation law prohibits plans from being structured in a manner requiring reimbursement in the event of recovery from a third party. It requires plan providers to calculate benefit levels in Pennsylvania based on expected liability conditions that differ from those in States that have not enacted similar antisubrogation legislation. Application of differing state subrogation laws to plans would therefore frustrate plan administrators' continuing obligation to calculate uniform benefit levels nationwide. Accord, Alessi v Raybestos-Manhattan, Inc., supra (state statute prohibiting offsetting worker compensation payments against pension benefits pre-empted since statute would force employer either to structure all benefit payments in accordance with state statute or adopt different payment formulae for employers inside and outside State). As we stated in Fort Halifax Packing Co. v Coyne, supra, at 9, "[t]he most efficient way to meet these [administrative] responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits."

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[3] The bill introduced in the Senate and reported out of the Committee on Labor and Public Welfare would have pre-empted "any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act." S 4, 93d Cong, 1st Sess, § 609(a) (1973). As introduced in the House, the bill that became ERISA would have superseded "any and all laws of the States and of the political subdivisions thereof insofar as they may now or hereafter relate to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans." HR 2, 93d Cong, 1st Sess, § 114 (1973). The bill was approved by the Committee on Education and Labor in a slightly modified form. See HR 2, 93d Cong, 1st Sess, § 514(a) (1973).

There is no dispute that the Pennsylvania law falls within ERISA's insurance saving clause, which provides, *"[e]xcept as provided in [the deemer clause],* nothing in this subchapter

shall be construed to exempt or relieve any person from any law of any State which regulates insurance," § 514(b)(2)(A), 29 USC § 1144(b)(2)(A) [29 USCS § 1144(b)(2)(A)] (emphasis added). Section 1720 directly controls the terms of insurance contracts by invalidating any subrogation provisions that they contain. See Metropolitan Life Ins. Co. v Massachusetts, 471 US, at 740-741, 85 L Ed 2d 728, 105 S Ct 2380. It does not merely have an impact on the insurance industry; it is aimed at it. See Pilot Life Ins. Co. v Dedeaux, 481 US 41, 50, 95 L Ed 2d 39, 107 S Ct 1549 (1987). This returns the matter of subrogation to state law. Unless the statute is excluded from the reach of the saving clause by virtue of the deemer clause, therefore, it is not pre-empted.

We read the deemer clause to exempt self-funded ERISA plans from state laws that "regulat[e] insurance" within the meaning of the saving clause. By forbidding States to deem employee benefit plans "to be an insurance company or other insurer . . . or to be engaged in the business of insurance," the deemer clause relieves plans from state laws "purporting to regulate insurance." As a result, self-funded ERISA plans are exempt from state regulation insofar as that regulation "relate[s] to" the plans. State laws directed toward the plans are pre-empted because they relate to an employee benefit plan but are not "saved" because they do not regulate insurance. State laws that directly regulate insurance are "saved" but do not reach self-funded employee benefit plans because the plans may not be deemed to be insurance companies, other insurers, or engaged in the business of insurance for purposes of such state laws. On the other hand, employee benefit plans that are insured are subject to indirect state insurance regulation. An insurance company that insures a plan remains an insurer for purposes of state laws "purporting to regulate insurance" after application of the deemer clause. The insurance company is therefore not relieved from state insurance regulation. The ERISA plan is consequently bound by state insurance regulations insofar as they apply to the plan's insurer.

Our reading of the deemer clause is consistent with Metropolitan Life Ins. Co. v Massachusetts, supra. That case involved a Massachusetts statute requiring certain self-funded benefit plans and insurers issuing group health policies to plans to provide minimum mental health benefits. Id., at 734, 85 L Ed 2d 728, 105 S Ct 2380. In pointing out that Massachusetts had never tried to enforce the portion of the statute pertaining directly to benefit plans, we stated, "[i]n light of ERISA's 'deemer clause,' which states that a benefit plan shall not 'be deemed an insurance company' for purposes of the insurance saving clause, Massachusetts has never tried to enforce [the statute] as applied to benefit plans directly, effectively conceding that such an application of [the statute] would be pre-empted by ERISA's pre-emption clause." Id., at 735, n 14, 85 L Ed 2d 728, 105 S Ct 2380 (citations omitted). We concluded that the statute, as applied to insurers of plans, was not pre-empted because it regulated insurance and was therefore saved. Our decision, we acknowledged, "results in a distinction between insured and uninsured plans, leaving the former open to indirect regulation while the latter are not." Id., at 747, 85 L Ed 2d 728, 105 S Ct 2380. "By so doing, we merely give life to a distinction created by Congress in the 'deemer clause,' a distinction Congress is aware of and one it has chosen not to alter." Ibid. (footnote omitted).

Our construction of the deemer clause is also respectful of the presumption that Congress does not intend to pre-empt areas of traditional state regulation. See Jones v Rath Packing Co. 430 US, at 525, 51 L Ed 2d 604, 97 S Ct 1305. In the McCarran-Ferguson Act, 59 Stat 33, as amended, 15 USC § 1011 et seq. [15 USCS §§ 1011 et seq.], Congress provided that the "business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 USC § 1012(a) [15 USCS § 1012(a)]. We have identified laws governing the "business of insurance" in the Act to include not only direct regulation of the insurer but also regulation of the substantive terms of insurance contracts. Metropolitan Life Ins. Co. v Massachusetts, supra, at 742-744, 85 L Ed 2d 728, 105 S Ct 2380.

By recognizing a distinction between insurers of plans and the contracts of those insurers, which are subject to direct state regulation, and self-insured employee benefit plans governed by ERISA, which are not, we observe Congress' presumed desire to reserve to the States the regulation of the "business of insurance."

Respondent resists our reading of the deemer clause and would attach to it narrower significance. According to the deemer clause, "[n]either an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State *purporting* to regulate insurance companies [or] insurance contracts." § 514(b)(2)(B), 29 USC § 1144(b)(2)(B) [29 USCS § 1144(b)(2)(B)] (emphasis added). Like the Court of Appeals, respondent would interpret the deemer clause to except from the saving clause only state insurance regulations that are pretexts for impinging upon core ERISA concerns. The National Conference of State Legislatures et al. as amici curiae in support of respondent offer an alternative interpretation of the deemer clause. In their view, the deemer clause precludes States from deeming plans to be insurers only for purposes of state laws that apply to insurance as a business, such as laws relating to licensing and capitalization requirements.

These views are unsupported by ERISA's language. Laws that *purportedly* regulate insurance companies or insurance contracts are laws having the "appearance of" regulating or "intending" to regulate insurance companies or contracts. Black's Law Dictionary 1236 (6th ed 1990). Congress' use of the word does not indicate that it directed the deemer clause solely at deceit that it feared state legislatures would practice. Indeed, the Conference Report, in describing the deemer clause, omits the word "purporting," stating, "an employee benefit plan is not to be considered as an insurance company, bank, trust company, or investment

[498 US 64]

company (and is not to be considered as engaged in the business of insurance or banking) for purposes of any State law that regulates insurance companies, insurance contracts, banks, trust companies, or investment companies." HR Conf Rep No. 93-1280, p 383 (1974).

Nor, in our view, is the deemer clause directed solely at laws governing the business of insurance. It is plainly directed at "any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies." § 514(b)(2)(B), 29 USC § 1144(b)(2)(B) [29 USCS § 1144(b)(2)(B)]. Moreover, it is difficult to understand why Congress would have included *insurance contracts* in the pre-emption clause if it meant only to pre-empt state laws relating to the operation of insurance as a business. To be sure, the saving and deemer clauses employ differing language to achieve their ends—the former saving, except as provided in the deemer clause, "any law of any State which regulates insurance" and the latter referring to "any law of any State purporting to regulate insurance companies [or] insurance contracts." We view the language of the deemer clause, however, to be either coextensive with or broader, not narrower, than that of the saving clause. Our rejection of a restricted reading of the deemer clause does not lead to the deemer clause's engulfing the saving clause. As we have pointed out, supra, at 62-63, 112 L Ed 2d, at 367, the saving clause retains the independent effect of protecting state insurance regulation of insurance contracts purchased by employee benefit plans.

[1f, 5] Congress intended by ERISA to "establish pension plan regulation as exclusively a federal concern." Alessi v Raybestos-Manhattan, Inc. 451 US, at 523, 68 L Ed 2d 402, 101 S Ct 1895 (footnote omitted). Our interpretation of the deemer clause makes clear that if a plan is insured, a State may regulate it indirectly through regulation of its insurer and its insurer's insurance contracts; if the plan is uninsured, the State may not regulate it. As a result, employers will not face "'conflicting or inconsistent State and local regulation of employee benefit plans.'"

[498 US 65]

Shaw v Delta Air Lines, Inc. 463 US, at 99, 77 L Ed 2d 490, 103 S Ct 2890 (quoting remarks of Sen. Williams). A construction of the deemer clause that exempts employee benefit plans from only those state regulations that encroach upon core ERISA concerns or that apply to insurance as a business would be fraught with administrative difficulties, necessitating definition of core ERISA concerns and of what constitutes business activity. It would therefore undermine Congress' desire to avoid "endless litigation over the validity of State action," see 120 Cong Rec 29942 (1974) (remarks of Sen. Javits), and instead lead to employee benefit plans' expenditure of funds in such litigation.

[1g] In view of Congress' clear intent to exempt from direct state insurance regulation ERISA employee benefit plans, we hold that ERISA pre-empts the application of § 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law to the FMC Salaried Health Care Plan. We therefore vacate the judgment of the United States Court of Appeals for the Third Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice **Stevens,** dissenting.

The Court's construction of the statute draws a broad and illogical distinction between benefit plans that are funded by the employer (self-insured plans) and those that are insured by regulated insurance companies (insured plans). Had Congress intended this result, it could have stated simply that "all State laws are pre-empted insofar as they relate to any self-insured employee plan." There would then have been no need for the "saving clause" to exempt state insurance laws from the pre-emption clause, or the "deemer clause," which the Court today reads as merely reinjecting

into the scope of ERISA's pre-emption clause those same exempted state laws insofar as they relate to self-insured plans.

From the standpoint of the beneficiaries of ERISA plans—who after all are the primary beneficiaries of the entire statutory program—there is no apparent reason for treating self-insured plans differently from insured plans. Why should a self-insured plan have a right to enforce a subrogation clause against an injured employee while an insured plan may not? The notion that this disparate treatment of similarly situated beneficiaries is somehow supported by an interest in uniformity is singularly unpersuasive. If Congress had intended such an irrational result, surely it would have expressed it in straightforward English. At least one would expect that the reasons for drawing such an apparently irrational distinction would be discernible in the legislative history or in the literature discussing the legislation.

The Court's anomalous result would be avoided by a correct and narrower reading of either the basic pre-emption clause or the deemer clause.

I

The Court has endorsed an unnecessarily broad reading of the words "relate to any employee benefit plan" as they are used in the basic pre-emption clause of § 514(a). I acknowledge that this reading is supported by language in some of our prior opinions. It is not, however, dictated by any prior holding, and I am persuaded that Congress did not intend this clause to cut nearly so broad a swath in the field of state laws as the Court's expansive construction will create.

The clause surely does not pre-empt a host of general rules of tort, contract, and procedural law that relate to benefit plans as well as to other persons and entities. It does not, for example, pre-empt general state garnishment rules insofar as they relate to ERISA plans. Mackey v Lanier Collection Agency & Service, Inc. 486 US 825, 100 L Ed 2d 836, 108 S Ct 2182 (1988). Moreover, the legislative history of the provision indicates that

throughout most of its consideration of pre-emption, Congress was primarily concerned about areas of possible overlap between federal and state requirements. Thus, the bill that was introduced in the Senate would have preempted state laws insofar as they "relate to the subject matters regulated by this Act,"[1] and the House bill more specifically identified state laws relating "to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans."[2] Although the compromise that produced the statutory language "relate to any employee benefit plan" is not discussed in the legislative history, the final version is perhaps best explained as an editorial amalgam of the two bills rather than as a major expansion of the section's coverage.

When there is ambiguity in a statutory provision preempting state law, we should apply a strong presumption against the invalidation of well-settled, generally applicable state rules. In my opinion this presumption played an important role in our decisions in Fort Halifax Packing Co. v Coyne, 482 US 1, 96 L Ed 2d 1, 107 S Ct 2211 (1987), and Mackey v Lanier Collection Agency & Service, Inc., supra. Application of that presumption leads me to the conclusion that the pre-emption clause should apply only to those state laws that purport to regulate subjects regulated by ERISA or that are inconsistent with ERISA's central purposes. I do not think Congress intended to foreclose Pennsylvania from enforcing the antisubrogation provisions of its state Motor Vehicle Financial Responsibility Law against ERISA plans—most certainly, it did not intend to pre-empt enforcement of that statute against self-insured plans while preserving enforcement against insured plans.

II

Even if the "relate to" language in the basic pre-emption clause is read broadly, a proper interpretation of the carefully drafted text of the deemer clause would caution against finding pre-emption in this case. Before identifying the key words in that text, it is useful to comment on the history surrounding enactment of the deemer clause.

The number of self-insured employee benefit plans grew dramatically in the 1960's and early 1970's.[3] The question whether such plans were, or should be, subject to state regulation remained unresolved when ERISA was enacted. It was, however, well recognized as early as 1967 that requiring self-insured plans to comply with the regulatory requirements in state insurance codes would stifle their growth:

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[1] S 4, 93d Cong, 1st Sess, § 609(a) (1973), reprinted at 1 Legislative History of the Employee Retirement Income Security Act of 1974 (Committee Print compiled by the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare) 93, 186 (1976) (Leg Hist).

[2] HR 2, 93d Cong, 1st Sess, § 114 (1973); 1 Leg Hist 51.

> "Application of state insurance laws to uninsured plans would make direct payment of benefits pointless and in most cases not feasible. This is because a welfare plan would have to be operated as an insurance company in order to comply with the detailed regulatory requirements of state insurance codes designed with the typical operations of insurance companies in mind. It presumably would be necessary to form a captive insurance company with prescribed capital and surplus, capable of obtaining a certificate of authority from the insurance department of all states in which the plan was 'doing business,' establish premium rates subject to approval by the insurance department, issue policies in the form approved by the insurance department, pay commissions and premium taxes required by the insurance law, hold and deposit reserves established by the insurance department, make investments permitted under the law, and comply with all filing and examination requirements of the insurance department. The result would be to reintroduce
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> [498 US 69]
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> an insurance company, which the direct payment plan was designed to dispense with. Thus it can be seen that the real issue is not whether uninsured plans are to be *regulated* under state insurance laws, but whether they are to be *permitted.*" Goetz, Regulation of Uninsured Employee Welfare Plans Under State Insurance Laws, 1967 Wis L Rev 319, 320-321 (emphasis in original).

In 1974 while ERISA was being considered in Congress, the first state court to consider the applicability of state insurance laws to self-insured plans held that a self-insured plan could not pay out benefits until it had satisfied the licensing requirements governing insurance companies in Missouri and thereby had subjected itself to the regulations contained in the Missouri insurance code. Missouri v Monsanto Co., Cause No. 259774 (St. Louis Cty. Cir Ct, Jan. 4, 1973), rev'd, 517 SW2d 129 (Mo 1974). Although it is true that the legislative history of ERISA or the deemer clause makes no reference to the Missouri case, or to this problem—indeed, it contains no explanation whatsoever of the reason for enacting the deemer clause—the text of the clause itself plainly reveals that it was designed to protect pension plans from being subjected to the detailed regulatory provisions that typically apply to all state-regulated insurance companies—laws that purport to regulate insurance companies and insurance contracts.

The key words in the text of the deemer clause are "deemed," "insurance company," and "purporting."[4] It provides

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[3] See Comment, State Regulation of Noninsured Employee Welfare Benefit Plans, 62 Geo LJ 339, 340 (1973).

that an employee welfare plan shall not be *deemed* to be an *insurance company* or to be engaged in the business of insurance for the purpose of determining whether it is an entity that is regulated by any state law *purporting* to regulate *insurance companies* and insurance contracts.

Pennsylvania's insurance code purports, in so many words, to regulate insurance companies and insurance contracts. It governs the certification of insurance companies, Pa Stat Ann, Tit 40, § 400 (Purdon 1971), their minimum capital stock and financial requirements to do business, § 386 (Purdon 1971 and Supp 1990-1991), their rates, e.g., § 532.9 (Purdon 1971) (authorizing Insurance Commissioner to regulate minimum premiums charged by life insurance companies), and the terms that insurance policies must, or may, include, e.g., § 510 (Purdon 1971 and Supp 1990-1991) (life insurance policies), § 753 (Purdon 1971) (health and accident insurance policies). The deemer clause prevents a State from enforcing such laws purporting to regulate insurance companies and insurance contracts against ERISA plans merely by deeming ERISA plans to be insurance companies. But the fact that an ERISA plan is not deemed to be an insurance company for the purpose of deciding whether it must comply with a statute that purports to regulate "insurance contracts" or entities that are defined as "insurance companies" simply does not speak to the question whether it must nevertheless comply with a statute that expressly regulates subject matters other than insurance.

There are many state laws that apply to insurance companies as well as to other entities. Such laws may regulate some aspects of the insurance business, but do not require one to be an insurance company in order to be subject to their terms. Pennsylvania's Motor Vehicle Financial Responsibility Law is such a law. The fact that petitioner's plan is not deemed to be an insurance company or an insurance contract does not have any bearing on the question whether petitioner,

like all other persons, must nevertheless comply with the Motor Vehicle Financial Responsibility Law.

If one accepts the Court's broad reading of the "relate to" language in the basic pre-emption clause, the answer to the question whether petitioner must comply with state laws regulating entities including, but not limited to, insurance companies depends on the scope of the saving clause.[5] In this case, I am prepared to accept the Court's broad reading of that clause, but it is of critical importance to me that the category of state laws described in the saving clause is broader than the category described in the deemer clause. A state law "which regulates insurance," and is therefore exempted from ERISA's pre-emption provision by operation of the saving clause, does not necessarily have as its purported subject of regulation an "insurance company" or an activity that is engaged in by persons who are insurance companies. Rather, such a law may aim to regulate another matter altogether, but also have the effect of regulating insurance. The deemer clause, by contrast, reinjects into the scope of ERISA pre-emption only those state laws that "purport to" regulate insurance companies or contracts—laws such as those which set forth the licensing and capitalization requirements for insurance companies or the minimum required provisions in insurance contracts. While the saving clause thus exempts from the pre-emption clause all state laws that have the broad effect of regulating insurance, the deemer clause simply allows pre-emption of those state laws that expressly regulate insurance and that would therefore be applicable to ERISA plans only if States were allowed to deem such plans to be insurance companies.

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[4] Section 514(b)(2)(B), as set forth in 29 USC § 1144(b)(2)(B) [29 USCS § 1144(b)(2)(B)], provides:

"Neither an employee benefit plan . . . nor any trust established under such a plan, shall be *deemed* to be an *insurance company* or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State *purporting* to *regulate insurance companies,* insurance contracts, banks, trust companies, or investment companies." (Emphasis added).

[5] Section 514(b)(2)(A), as set forth in 29 USC § 1144(b)(2)(A) [29 USCS § 1144(b)(2)(A)], provides:

"Except as provided in subparagraph (B) nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."

Pennsylvania's Motor Vehicle Financial Responsibility Law fits into the broader category of state laws that fall within the saving clause only. The Act regulates persons in addition to insurance companies and affects subrogation and indemnity agreements that are not necessarily insurance contracts. Yet because it most assuredly is not a law "purporting" to regulate any of the entities described in the deemer clause—"insurance companies, insurance contracts, banks, trust companies, or investment companies," the deemer clause does not by its plain language apply to this state law. Thus, although the Pennsylvania law is exempted from ERISA's pre-emption provision by the broad saving clause because it "regulates insurance," it is not brought back within the scope of ERISA pre-emption by operation of the narrower deemer clause. I therefore would conclude that petitioner is subject to Pennsylvania's Motor Vehicle Financial Responsibility Law.

I respectfully dissent.

[498 US 73]

ARCADIA, OHIO, et al., Petitioners

v

OHIO POWER COMPANY et al.

498 US 73, 112 L Ed 2d 374, 111 S Ct 415, reh den 498 US 1075, 112 L Ed 2d 865, 111 S Ct 804

[No. 89-1283]

Argued October 1, 1990. Decided November 27, 1990.

Decision: FERC order disapproving coal charges that had allegedly been approved by SEC held not pre-empted under conflict-of-jurisdiction provisions of § 318 of Federal Power Act (16 USCS § 825q).

SUMMARY

The Securities and Exchange Commission (SEC) authorized a power company in Ohio to establish and capitalize an affiliate coal company. Among the power company's wholesale customers were 15 Ohio municipalities. In a series of orders pursuant to the SEC's regulatory jurisdiction under the Public Utility Holding Company Act (PUHCA) (15 USCS §§ 79 et seq.), the SEC specified that the affiliate's charges for coal sold to the power company could be no greater than the affiliate's actual costs. In 1982, the power company filed rate increases for its wholesale service. The Federal Energy Regulatory Commission (FERC) initiated a rate proceeding and (1) acting pursuant to § 206 of the Federal Power Act (FPA) (16 USCS § 824e), disallowed as unreasonable a portion of the power company's coal costs; (2) ordered the power company (a) to establish coal rates that were calculated to recover from its customers no more than the comparable market price for coal, and (b) to refund prior overcharges; and (3) rejected the power company's argument that the SEC had effectively approved the affiliate's coal charges, and that FERC's jurisdiction to regulate the coal rates was ousted by § 318 of the FPA (16 USCS § 825q), which is captioned "Conflict of jurisdiction," and which provides that if—with respect to the issue, sale, or guarantee of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or "any other subject matter"—any person is subject both to a requirement of the PUHCA and to a requirement of the FPA, the PUHCA requirement shall

Briefs of Counsel, p 1224, infra.

apply, and such person shall not be subject to the FPA requirement "with respect to the same subject matter" (39 FERC ¶ 61,098). The United States Court of Appeals for the District of Columbia Circuit, reversing, held that FERC's disallowance of the coal charges was precluded by § 318 (279 App DC 377, 880 F2d 1400, reh den en banc 897 F2d 540).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Scalia, J., expressing the unanimous view of the eight participating members of the court, it was held that (1) § 318 is properly read as addressing conflicts of jurisdiction with respect to four enumerated categories, the fourth being "the acquisition or disposition of any security, capital assets, facilities, or any other subject matter"; (2) the phrase "or any other subject matter" is not to be read as a fifth separate category, so as to create a general conflicts provision that polices the entire regulatory border between the SEC and FERC; (3) § 318, as properly read, had no application to the case at hand, and thus the FERC order was not pre-empted under § 318, given that (a) in order to prevail under § 318, the power company would have had to establish that it was subjected to both an SEC requirement and a FERC requirement with respect to "the acquisition or disposition of any security, capital assets, facilities, or any other subject matter," and (b) although the power company's acquisition of the affiliate might have fit such a description, it was impossible to identify any FERC requirement that was imposed "with respect to the same subject matter" within the meaning of § 318, since even if FERC's rate order were accepted as a requirement qualifying under § 318, the order was still a requirement with respect to a different subject matter from the acquisition of the affiliate, and the same conclusion would follow if the action qualifying for § 318 treatment were regarded to be the power company's acquisition of coal, rather than its acquisition of the affiliate; and (4) it was left for the Court of Appeals to resolve, on remand, the questions (a) whether FERC's decision violated one of FERC's own regulations, and (b) whether the coal rate prescribed by FERC was just and reasonable.

Stevens, J., joined by Marshall, J., concurring, expressed the view that (1) the court's interpretation of § 318 was correct, and (2) even if § 318 were read broadly to give the SEC priority over FERC whenever the requirements of the two agencies conflict, the SEC's orders at issue did not conflict with FERC's rate order.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC — regulation of coal charges

1a-1e. Section 318 of the Federal Power Act (FPA) (16 USCS § 825q)—which provides that if, with respect to the issue, sale, or guarantee of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, any person is subject both to a requirement of the Public Utility Holding Company Act (PUHCA) (15 USCS §§ 79 et seq.) and to a requirement of the FPA (16 USCS §§ 791a et seq.), the PUHCA requirement shall apply, and such person shall not be subject to the FPA requirement with respect to the same subject matter—has no application to a case where (1) the Securities and

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54 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 434; 64 Am Jur 2d, Public Utilities § 310

24 Federal Procedure, L Ed, Natural and Marine Resources §§ 56:85, 56:233; 30 Federal Procedure, L Ed, Securities Regulation § 70:605

20A Am Jur Pl & Pr Forms (Rev), Public Utilities, Form 91

15 USCS §§ 79 et seq.; 16 USCS §§ 791a et seq.; 16 USCS § 825q

US L Ed Digest, Public Utilities § 10; Securities Regulation § 7

Index to Annotations, Coal and Coal Mining; Electricity and Electric Companies; Federal Energy Regulatory Commission; Federal Power Act and Commission; Rates and Charges; Securities Regulation; Utilities

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding. 16 ALR4th 454.

Validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased cost of fuel to its customers. 83 ALR3d 933.

Exchange Commission (SEC), exercising its authority under the PUHCA, (a) authorized a public utility to establish and capitalize an affiliate coal company, and (b) issued orders specifying that the affiliate's charges for coal sold to the utility could be no greater than the affiliate's actual costs, but (2) a subsequent Federal Energy Regulatory Commission (FERC) order declared the affiliate's coal charges unreasonable and thus unrecoverable in the utility's wholesale rates; under such circumstances, the FERC order is not pre-empted under § 318, given that (1) in order to prevail under § 318, the utility would have to establish that it was subjected to both an SEC requirement and a FERC requirement with respect to "the acquisition or disposition of any security, capital assets, facilities, or any other subject matter," and (2) although the utility's acquisition of the affiliate might fit such a description, it is impossible to identify any FERC requirement that was imposed "with respect to the same subject matter" within the meaning of § 318, since (a) even if FERC's rate order is accepted as a requirement qualifying under § 318, the order is still a requirement with respect to a different subject matter from the acquisition of the affiliate, and (b) the same conclusion would follow if the action qualifying for § 318 treatment were regarded to be the utility's acquisition of coal, rather than its acquisition of the affiliate.

Public Utilities § 10; Securities Regulation § 7; Statutes §§ 82, 99, 110, 145.2, 150, 173 — conflicts of jurisdiction between FERC and SEC

2a-2g. Section 318 of the Federal Power Act (FPA) (16 USCS § 825q)—which is captioned "Conflict of jurisdiction," and which provides that if, with respect to the issue, sale, or guarantee of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, "or any other subject matter," any person is subject both to a requirement of the Public Utility Holding Company Act (PUHCA) (15 USCS §§ 79 et seq.) and to a requirement of the FPA (16 USCS §§ 791a et seq.), the PUHCA requirement shall apply, and such person shall not be subject to the FPA requirement with respect to the same subject matter—is properly read as addressing conflicts of jurisdiction with respect to (1) the issue, sale, or guarantee of a security, or assumption of obligation or liability in respect of a security, (2) the method of keeping accounts, (3) the filing of reports, or (4) the acquisition or disposition of any security, capital assets, facilities, or any other subject matter; the phrase "or any other subject matter" is not to be read as a fifth separate category, so as to create a general conflicts provision that polices the entire regulatory border between the Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC), since (1) such a reading would render the preceding enumeration of specific subjects entirely superfluous, and would introduce both redundancy and omission; (2) the alternative reading, although perhaps inelegant, avoids such problems; (3) under the alternative reading, § 318 takes on a shape that gives meaning to what otherwise seems a random listing of subject matters, in that § 318, so interpreted, addresses the conflict of jurisdiction within four areas of plainly parallel authority granted to both the SEC and FERC; (4) the alternative reading is confirmed by long-time understanding and practice; and (5) any indication in the legislative history that the phrase "or any other subject matter" was intended to be read as a fifth separate category is overborne by the text.

Statutes § 82 — construction — duplication — omission

3. With respect to the construction of statutes, Congress is not presumed to draft its laws in a way that produces duplication and omission.

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC

4. In connection with the regulation of public utilities, the first category of conflicts of jurisdiction between the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC) that is addressed by § 318 of the Federal Power Act (FPA) (16 USCS § 825q)—namely, conflicts with respect to the issue, sale, or guarantee of a security, or assumption of obligation or liability in respect of a security—refers to § 204 of the FPA (16 USCS § 824c), which requires all such transactions to be approved by FERC order, and to § 6 of the Public Utility Holding Company Act (15 USCS § 79f), which in certain cases requires similar approval by the SEC.

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC — accounts and records

5. In connection with the regulation of public utilities, the second category of conflicts of jurisdiction between the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC) that is addressed by § 318 of the Federal Power Act (FPA) (16 USCS § 825q)—namely, conflicts with respect to the method of keeping accounts—refers to § 301 of the FPA (16 USCS § 825), which authorizes FERC to prescribe accounts and records, and to § 15 of the Public Utility Holding Company Act (15 USCS § 79o), which similarly authorizes the SEC.

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC — reporting requirements

6. In connection with the regulation of public utilities, the third category of conflicts of jurisdiction between the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC) that is addressed by § 318 of the Federal Power Act (FPA) (16 USCS § 825q)—namely, conflicts with respect to the filing of reports—refers to § 304 of the FPA (16 USCS § 825c), which authorizes FERC to require periodic or special reports, and to § 14 of the Public Utility Holding Company Act (15 USCS § 79n), which similarly empowers the SEC.

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC

7. In connection with the regulation of public utilities, the fourth category of conflicts of jurisdiction between the Federal Energy Regulatory Commission (FERC) and the

Securities and Exchange Commission (SEC) that is addressed by § 318 of the Federal Power Act (FPA) (16 USCS § 825q)—namely, conflicts with respect to the acquisition or disposition of any security, capital assets, facilities, or any other subject matter—refers to § 203 of the FPA (16 USCS § 824b), which requires all purchases of securities of other public utilities, and all sales of facilities worth more than $50,000, to be approved by FERC order, and to § 9 of the Public Utility Holding Company Act (15 USCS § 79i), which requires SEC approval of acquisitions of securities and utility assets and other interests.

Public Utilities § 10; Securities Regulation § 7 — conflicts of jurisdiction between FERC and SEC

8. Although it is not necessarily true that § 318 of the Federal Power Act (FPA) (16 USCS § 825q)—which provides that if, with respect to four enumerated subject matters, any person is subject both to a requirement of the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act (PUHCA) (15 USCS §§ 79 et seq.) and to a requirement of the Federal Energy Regulatory Commission (FERC) under the FPA (16 USCS §§ 791a et seq.), the PUHCA requirement shall apply, and such person shall not be subject to the FPA requirement with respect to the same subject matter—gives the SEC precedence over FERC only where certain specific statutory provisions are the jurisdictional basis for both the SEC and the FERC actions, § 318 does require that the "same subject matter" as to which the duplicative requirements exist be one of those subject matters specifically enumerated in § 318 and not some different, more general "other subject matter."

Appeal § 1750 — issues to be considered on remand

9. On remand from a United States Supreme Court decision holding that the conflict-of-jurisdiction provisions of § 318 of the Federal Power Act (16 USCS § 825q) did not apply to a case where a Federal Energy Regulatory Commission (FERC) order disapproved a company's coal charges that had allegedly been approved by the Securities and Exchange Commission, and that the FERC order thus was not preempted under § 318, the Supreme Court will leave to be resolved by a United States Court of Appeals the questions (1) whether FERC's decision violated one of FERC's own regulations, and (2) whether the coal rate prescribed by FERC was just and reasonable.

SYLLABUS BY REPORTER OF DECISIONS

Respondent Ohio Power Co. is subject to the overlapping regulatory jurisdiction of the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act (PUHCA) and the Federal Energy Regulatory Commission (FERC) under the Federal Power Act (FPA). In a series of orders authorizing Ohio Power to establish and capitalize an affiliate to secure and develop a reliable source of coal, the SEC specified that the price Ohio Power paid for such coal could be no greater than (and, in one order, equal to) the affiliate's actual costs. Subsequently, FERC declared coal charges complying with this specification unreasonable and thus unrecoverable in Ohio

Power's rates to its wholesale customers, including petitioner municipalities, rejecting Ohio Power's argument that the SEC, by the abovementioned orders, had "approved" the affiliate's charges, and that § 318 of the FPA ousts FERC of jurisdiction. The Court of Appeals reversed, holding FERC's disallowance of the charges to be precluded by § 318, which is captioned "Conflict of jurisdiction," and which provides that "[i]f, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, *or any other subject matter,* any person is subject both to a requirement of [PUHCA] and to a requirement of [the FPA], the [PUHCA] requirement . . . shall apply . . . , and such person shall not be subject to the [FPA] requirement . . . *with respect to the same subject matter* . . . ." (Emphasis added.)

Held:

1. Section 318 has no application to this case. The phrase "or any other subject matter" does not, as the lower court assumed, parallel the other listed subjects "with respect to [which]" duplicative agency requirements will trigger the preemption rule. Rather, it is part of the phrase that reads "the acquisition or disposition of any security, capital assets, facilities, or any other subject matter." Besides being more faithful to the precise words of the text, this reading allows § 318 to take on a shape that gives meaning to what otherwise seems a random listing of specific subject matters (with "any other subject matter" tagged on at the end). The section addresses conflicts of jurisdiction within four areas of plainly parallel authority granted both to the SEC and FERC by particular sets of PUHCA and FPA sections. This is confirmed by expert commentary and by the practice of FERC and its predecessor, which have never decided a § 318 issue except in connection with orders promulgated under one of the four enumerated categories. Thus, § 318 applies only if the "same subject matter" as to which the duplicative requirements exist is one of those specifically enumerated, and not some different, more general "other subject matter," as the lower court believed. Even assuming that FERC's rate order affecting the sale of electric power qualifies as a requirement "with respect to . . . the . . . disposition of . . . any other subject matter," it is still a requirement with respect to a *different* subject matter from Ohio Power's acquisition of its affiliate, which was the subject of the SEC orders.

2. This Court expresses no view on, but leaves to the lower court to resolve, the arguments that FERC's decision violates its own regulation providing that the price of fuel purchased from an affiliate shall be deemed to be reasonable where subject to the jurisdiction of a regulatory body, and that the FERC-prescribed rate is not "just and reasonable" because it "traps" costs which the SEC has implicitly approved.

279 US App DC 327, 880 F2d 1400, reversed and remanded.

Scalia, J., delivered the opinion of the Court, in which all other Members joined, except Souter, J., who took no part in the consideration or decision of the case. Stevens, J., filed a concurring opinion, in which Marshall, J., joined.

APPEARANCES OF COUNSEL

Carter G. Phillips argued the cause for petitioners.

Lawrence G. Wallace argued the cause for federal respondent in support of petitioners, by special leave of court.

Edward Berlin argued the cause for private respondents.

Briefs of Counsel, p 1224, infra.

OPINION OF THE COURT

[498 US 75]

Justice **Scalia** delivered the opinion of the Court.

[1a, 2a] This case concerns the interpretation of § 318 of the Federal Power Act, as added, 49 Stat 863, 16 USC § 825q [16 USCS § 825q], entitled "Conflict of jurisdiction," which governs certain overlapping responsibilities of the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC) in the regulation of power companies under the Public Utility Act of 1935, 49 Stat 803.

I

The Public Utility Act subjects some companies that transmit and distribute electric power to overlapping regulatory jurisdiction of the SEC and FERC, successor to the Federal Power Commission (FPC). Title I, known as the Public Utility Holding Company Act (PUHCA), 49 Stat 803, gives the SEC jurisdiction over certain transactions among registered public utility holding companies and their subsidiaries and affiliates. Title II, the Federal Power Act (FPA), 49 Stat 838, gives FERC jurisdiction over the transmission and sale at wholesale of electric power in interstate commerce. FERC-regulated electric power companies that are subsidiaries or affiliates of registered public utility holding companies are therefore subject to SEC regulation as well. Respondent Ohio Power Company, part of the American Electric Power system (AEP), is one such company; petitioners are 15 small Ohio villages and cities that are AEP's wholesale customers.

The dispute in this case begins in a series of orders issued by the SEC in the 1970's, authorizing Ohio Power to establish

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and capitalize an affiliate, Southern Ohio Coal Company (SOCCO), to secure and develop a reliable source of coal for the whole AEP system. The first order, in 1971, approved the sale and purchase of SOCCO's stock, and in the course of outlining the conditions of that approval, stated that SOCCO's charges for coal would be "based on" actual costs. Ohio Power Co. SEC Holding Company Act Release (HCAR) No. 17383 (Dec. 2, 1971). In 1978, the SEC authorized further investment by Ohio Power, and this time its order indicated that the price of coal "will not exceed the cost thereof to the seller." Ohio Power Co. HCAR No. 20515 (Apr. 24, 1978), 14 SEC Docket 928, 929. In 1979, in the course of another financing approval order, the SEC noted that Ohio Power would pay SOCCO less than the actual cost of coal if Ohio Power's after-tax capital costs exceeded a certain level. Southern Ohio Coal Co. HCAR No. 21008 (Apr. 17, 1979). The final order in 1980, approving further SOCCO financing, indicated that "[t]he price at which SOC[C]O's coal will be sold to AEP system companies will not exceed the cost thereof to the seller." Southern Ohio Coal Co. HCAR No. 21537 (Apr. 25, 1980).

In 1982, Ohio Power filed rate increases for its wholesale service. FERC initiated a rate proceeding under §§ 205 and 206 of the FPA, 16 USC §§ 824d, 824e [16 USCS §§ 824d, 824e], and quickly settled all issues save the reasonableness of Ohio Power's SOCCO coal costs. Pursuant to § 206 of the FPA, FERC disallowed that portion of Ohio Power's coal costs that did not satisfy FERC's "comparable market" test. Under this test, utilities that purchase coal from affiliates may recover only the price that they would have incurred had they purchased coal under a comparable coal supply contract with a nonaffiliated supplier. In Ohio Power's case, FERC found that Ohio Power had paid approximately 50% more than that market price in 1980, approximately 94% more in 1981, and between 24% and 33% more during the period 1982 through 1986. Accordingly, FERC ordered Ohio Power to establish rates

calculated to recover from its customers no more than the comparable market price for coal, and to refund prior overcharges. The agency rejected Ohio Power's argument that the SEC, by the abovementioned orders, had "approved" the coal charges by SOCCO, and that § 318 of the FPA ousts FERC of jurisdiction to regulate the same "subject matter" by declaring those charges unreasonable and thus unrecoverable in Ohio Power's wholesale rates. Ohio Power Co. 39 FERC ¶ 61,098 (1987).

The United States Court of Appeals for the District of Columbia Circuit reversed, holding FERC's disallowance of the charges to be precluded by § 318. Ohio Power Co. v FERC, 279 US App DC 327, 880 F2d 1400 (1989). We granted certiorari. 494 US 1055, 108 L Ed 2d 762, 110 S Ct 1522 (1990).

II

[1b, 2b] As decided by the Court of Appeals, and as argued here, two questions were presented in this case: (1) whether § 318 bars all FERC regulation of a subject matter regulated by the SEC, or only such regulation as actually imposes a conflicting requirement; and (2) if an actual conflict is prerequisite, whether it exists here. In our view, however, there is another question antecedent to these and ultimately dispositive of the present dispute: whether the SEC and FERC orders before us impose requirements with respect to a subject matter that is within the scope of § 318. We believe they do not.

Section 318 provides as follows:

> "Conflict of jurisdiction
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> "If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, *or any other subject matter,* any person is subject both to a requirement of the Public Utility Holding Company Act of 1935 or of a rule,
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> regulation, or order thereunder and to a requirement of this chapter or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this

> chapter, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of the Public Utility Holding Company Act of 1935, in which case the requirements of this chapter shall apply to such person." (Emphasis added.)

Crucial to the outcome of the present case is the lengthy conditional clause that begins this section, setting forth a list of subjects "with respect to [which]" duplicative requirements will trigger the pre-emption rule. More specifically, the key to the outcome is the phrase "or any other subject matter," which we have italicized in the above passage. The Court of Appeals appears to have assumed that it parallels the other phrases setting forth various objects of the prepositional phrase "with respect to." We do not think it reasonably bears that interpretation.

[2c] To begin with, that interpretation renders the preceding enumeration of specific subjects entirely superfluous—in effect adding to that detailed list "or anything else." Because the other four categories of enumeration are so disparate, the canon of ejusdem generis cannot be invoked to prevent the phrase "or any other subject matter" from swallowing what precedes it, leaving a statute that might as well have read "If, with respect to any subject matter . . . ." Such an interpretation should not be adopted unless the language renders it unavoidable. Here, however, the text not only does not compel that result but positively militates against it.

[2d, 3] As the Court of Appeals read § 318, the conditional clause lists five separate areas of duplicative requirements. Bracketed numbers inserted into the text would appear as follows:

> "If, with respect to [1] the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, [2] the method of keeping accounts, [3] the filing of reports, or [4] the acquisition or disposition of any security, capital assets, facilities, or [5] any other subject matter . . . ."

This reading, however, creates two problems of enumeration: First, it renders the "or" that introduces the fourth category duplicative ("If, with respect to [1], [2], [3], *or* [4], *or* [5]"), and second, it produces the peculiar omission of an "or" before the last item listed within the text of the fourth category ("the acquisition or disposition of any security, capital assets, facilities"). In casual conversation, perhaps, such absent-minded duplication and omission are possible, but Congress is not presumed to draft its laws that way. The attribution of such imprecision is readily avoided by placing the phrase "or any other subject matter" within the fourth enumeration clause, reading that to embrace "[4] the acquisition or disposition of any security, capital assets, facilities, or any other subject matter." It is inelegant, perhaps, to refer to "the acquisition or disposition of . . . [a] subject matter," but that inelegance must be preferred to a reading that introduces both redundancy and omission, and that renders the section's careful enumeration of subjects superfluous.

[2e, 4-7] Moreover, and most importantly, when § 318 is read in this fashion it takes on a shape that gives meaning to what otherwise seems a random listing of specific subject matters (with "any other subject matter" tagged on at the end). So interpreted, it addresses (as its caption promises) the "Conflict of jurisdiction" within four areas of plainly parallel authority granted both to the SEC, under PUHCA, and to the FPC (FERC), under the FPA. The first category, "the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security," refers to § 204 of the FPA, 16 USC § 824c [16 USCS § 824c], which requires all such transactions to be approved by FERC order, and to § 6 of PUHCA, 15 USC

§ 79f [15 USCS § 79f], which in certain cases requires similar approval by the SEC; the second, "the method of keeping accounts," refers to § 301, 16 USC § 825 [16 USCS § 825], which authorizes FERC to prescribe accounts and records, and to § 15, 15 USC § 79*o* [15 USCS § 79o], which similarly authorizes the SEC; the third, "the filing of reports," refers to § 304, 16 USC § 825c [16 USCS § 825c], which authorizes FERC to require "periodic or special reports," and § 14, 15 USC § 79n [15 USCS § 79n], which similarly empowers the SEC; and the fourth, "the acquisition or disposition of any security, capital assets, facilities, or any other subject matter" refers to § 203, 16 USC § 824b [16 USCS § 824b], which requires all purchases of securities of other public utilities, and all sales of facilities worth more than $50,000, to be approved by FERC order, and to § 9, 15 USC § 79i [15 USCS § 79i], which requires SEC approval of acquisitions of "securities and utility assets and other interests." The language of § 318 does not track precisely the language of any of these other sections, but the PUHCA and FPA sections making up each of the four sets are not themselves precisely parallel, so that some alternative formulation to bridge the gap would be expected.

[2f] Our reading is confirmed by longtime understanding and practice. An expert commentary upon the specific topic of overlapping SEC and FPC jurisdiction, written about 10 years after passage of the Public Utility Act, assumed as we have that § 318 implicated only the four FPC sections that we have identified. See Welch, Functions of the Federal Power Commission in Relation to the Securities and Exchange Commission, 14 Geo Wash L Rev 81, 88 (1945). And as far as we have been able to determine, in 50 years of administering the FPA, FERC and its predecessor, the FPC, have never decided an issue under § 318 except in connection with orders promulgated under those four sections.[1] Never before

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1. The vast majority of these were orders under § 203, in connection with ultilities' requests for approval of merger or of disposition of assets. See Florida Power Corp., 2 FERC ¶ 61,038, p 61,092 (1978); Potomac Edison Co. 54 FPC 1465, 1466 (1975); Union Light, Heat & Power Co. 39 FPC 277, 279 (1968); Buckeye Power, Inc. 38 FPC 519, 520 (1967); Buckeye Power, Inc. 38 FPC 253, 259 (1967); Minnesota Power & Light Co. 37 FPC 1059, 1060-1061 (1967); Arkansas Power & Light Co. 35 FPC 341, 341 (1966); Orange & Rockland Utilities, Inc. 34 FPC 107, 108 (1965); Public Service Co. of New Hampshire, 34 FPC 17, 20 (1965); Arkansas Power & Light Co. 32 FPC 1537, 1539 (1964); Pennsylvania Power & Light Co. 32 FPC 1263, 1265 (1964); Kentucky Utilities Co. 32 FPC 622, 623 (1964); South Carolina Electric & Gas Co. 29 FPC 1045, 1048 (1963); Philadelphia Electric Co. 28 FPC 1025, 1027 (1962); Arkansas Power & Light Co. 28 FPC 844, 846 (1962); Pennsylvania Electric Co. 27 FPC 81, 84 (1962); Cincinnati Gas & Electric Co. 25 FPC 1195, 1196 (1961); Arkansas Power & Light Co. 25 FPC 1151, 1152 (1961); Alabama Power Co. 25 FPC 1018, 1020 (1961); Northern States Power Co. 25 FPC 974, 977 (1961); Central Vermont Public Service Corp.

25 FPC 146, 149 (1961); Northern States Power Co. 24 FPC 457, 460 (1960); Commonwealth Edison Co. 24 FPC 94, 96 (1960); Minnesota Power & Light Co. 23 FPC 868, 869 (1960); Mississippi Valley Public Service Co. 23 FPC 104, 108 (1960); Central Vermont Public Service Corp. 22 FPC 737, 739 (1959); Arkansas Power & Light Co. 22 FPC 457, 458 (1959); Northern States Power Co. 21 FPC 780, 782 (1959); Conowingo Power Co. 21 FPC 511, 513-514 (1959); Philadelphia Electric Power Co. 21 FPC 157, 160 (1959); Wisconsin Michigan Power Co. 20 FPC 358, 360 (1958); Northern States Power Co. 20 FPC 355, 357 (1958); Orange & Rockland Utilities, Inc. 20 FPC 205, 206-207 (1958); Orange & Rockland Electric Co. 19 FPC 269, 276 (1958); Pacific Gas & Electric Co. 18 FPC 827, 829 (1957); Northern States Power Co. 18 FPC 532, 536-537 (1957); Pennsylvania Power & Light Co. 18 FPC 525, 528 (1957); Northern States Power Co. 18 FPC 395, 397 (1957); Northern States Power Co. 18 FPC 135, 137 (1957); Kentucky Utilities Co. 18 FPC 44, 46 (1957); Amesbury Electric Light Co. 18 FPC 1 (1957); Nantahala Power & Light Co. 17 FPC 899, 901 (1957); Cincinnati Gas & Electric Co. 17 FPC 669, 670 (1957); Northern States Power Co. 17 FPC 639, 641 (1957); Georgia Power & Light Co. 17 FPC 324, 327 (1957); Northern States Power Co. 16 FPC 876, 880 (1956); Scranton Electric Co. 15 FPC 1078, 1081 (1956); St. Joseph Light & Power Co. 14 FPC 985 (1955); Frontier Power Co. 14 FPC 941, 944 (1955); Carolina Aluminum Co. 14 FPC 829, 830 (1955); Baltimore Gas & Electric Co. 14 FPC 821, 822 (1955); Pennsylvania Water & Power Co. 14 FPC 706, 711 (1955); Cincinnati Gas & Electric Co. 14 FPC 639, 641 (1955); Connecticut River Power Co. 14 FPC 501, 503 (1955); Pacific Gas & Electric Co. 13 FPC 1563, 1564 (1954); Pacific Gas & Electric Co. 13 FPC 1334, 1335 (1954); Rockland Light & Power Co. 13 FPC 1300, 1302 (1954); Kentucky Utilities Co. 13 FPC 907, 908 (1954); West Penn Power Co. 13 FPC 866, 868 (1954); Ohio Edison Co. 12 FPC 1437, 1438 (1953); Lake Superior District Power Co. 12 FPC 1434, 1435 (1953); Wisconsin Power & Light Co. 12 FPC 1394, 1395-1396 (1953); Wisconsin Michigan Power Co. 12 FPC 1318, 1319 (1953); Louisiana Power & Light Co. 12 FPC 1168, 1169 (1953); Kansas City Power & Light Co. 11 FPC 1112, 1113 (1952); Kansas Gas & Electric Co. 11 FPC 1114, 1115-1116 (1952); Potomac Light & Power Co. 11 FPC 1069, 1070 (1952); South Penn Power Co. 11 FPC 1070, 1071 (1952); Missouri Public Service Co. 10 FPC 1120, 1122 (1951); Athol Gas & Electric Co. 10 FPC 729, 731 (1951); Pennsylvania Electric Co. 9 FPC 1304, 1306 (1950); Rhode Island Power Transmission Co. 9 FPC 942, 944 (1950); Wisconsin Power & Light Co. 9 FPC 859, 861 (1950); Northwestern Illinois Gas & Electric Co. 9 FPC 862, 863-864 (1950); Indiana & Michigan Electric Co. 9 FPC 617, 619 (1950); Potomac Electric Power Co. 8 FPC 997, 997 (1949); Bellows Falls Hydro-Electric Corp. 7 FPC 777, 780 (1948); Pennsylvania Power & Light Co. 6 FPC 428, 429 (1947); Northern Virginia Power Co. 5 FPC 458, 459 (1946); Central Vermont Public Service Corp. 4 FPC 1001, 1002 (1945); Worcester Suburban Electric Co. 4 FPC 929, 930-931 (1945); Wachusett Electric Co. 4 FPC 920, 921 (1945); California Public Service Co. 4 FPC 812, 814 (1944); Utah Power & Light Co. 4 FPC 791, 792 (1944); Indiana General Service Co. 4 FPC 783, 785 (1944); Empire District Electric Co. 4 FPC 665, 669 (1944); Virginia Electric & Power Co. 4 FPC 51, 53-54 (1944); Eastern Shore Public Service Co. 4 FPC 382, 384 (1943); Otter Tail Power Co. 3 FPC 1054, 1056 (1943); Superior Water, Light & Power Co. 3 FPC 960, 962 (1943); Cincinnati Gas & Electric Co. 3 FPC 883, 885 (1942); Point Pleasant Water & Light Co. 3 FPC 755, 757 (1942); Eastern Shore Public Service Co. 3 FPC 723, 724 (1942); Florida Power Co. 3 FPC 719, 719 (1942); Virginia Public Service Co. 3 FPC 704, 706 (1942); Associated Maryland Electric Power Corp. 3 FPC 646, 652 (1942); Montana-Dakota Utilities Co. 3 FPC 629, 631 (1942); In re Pennsylvania Electric Co. 3 FPC 544, 546 (1943); In re Pennsylvania Electric Co. 3 FPC 557, 558 (1943); In re Olcott Falls Co. 3 FPC 310, 312 (1942); South Carolina Electric & Gas Co. 3 FPC 1007, 1011 (1943); Otter Tail Power Co. 2 FPC 935, 936 (1941); In re Twin State Gas & Electric Co. 2 FPC 122, 123 (1940); Lexington Utilities Co. 1 FPC 787, 787 (1939); In re Evans, 1 FPC 511, 515-518 (1937).

A large number of orders discussing § 318 arose under § 204, in connection with requests for approval of securities sales or issuance. See Buckeye Power, Inc. 38 FPC, at 259; Orange & Rockland Utilities, Inc. 34 FPC, at 108; Philadelphia Electric Co. 28 FPC, at 1027; Utah Power & Light Co. 28 FPC 97, 98-99 (1962); Pacific Power & Light Co. 27 FPC 623, 626 (1962); Northern States Power Co. 25 FPC 974, 977 (1961); Northern States Power Co. 24 FPC 457, 460 (1960); Mississippi Valley Public Service Co. 23 FPC, at 108; Holyoke Water Power Co. 21 FPC 676, 678 (1959); Conowingo Power Co. 21 FPC, at 513-514; Minnesota Power & Light Co. 21 FPC 214, 215 (1959); Northern States Power Co. 20 FPC 355, 357 (1958); Orange & Rockland Utilities, Inc. 20 FPC, at 207; Orange & Rockland Electric Co. 19 FPC, at 275-276; Holyoke Wathis [498 US 81] case has § 318 been used as a general conflicts provision, policing the entire regulatory border between the two agencies.[2]

[498 US 82]

[1c, 8] It is not necessarily true that § 318 gives the SEC precedence only when the specific sections that we have referred to are the jurisdictional basis for both the FERC and the [498 US 83] SEC action—as they are not, of course, here. But the text of the section, as we have explicated it above, does require that the "same subject matter" as to which the duplicative requirements [498 US 84] exist be one of those specifically enumerated, and not some different, more general "other subject matter"—such as what the Court of Appeals relied upon, "[t]he price term of sales contracts between associated companies," 279 US App DC, at 333, 880 F2d, at 1406. In the context of the present case, the only enumerated subject matter conceivably pertinent is contained within what we have referred to as the fourth category. To prevail under § 318, Ohio Power would have to establish that it has been subjected both to an SEC requirement under PUHCA and to a FERC requirement under the FPA, "with respect to . . . the acquisition or disposition of any security, capital assets, facilities, or any other subject matter." The acquisition of SOCCO by Ohio Power might fit the quoted description, so that requirements in the SEC orders might qualify; but it is impossible to identify any FERC requirement that is imposed (as § 318 demands) "with respect to the same subject matter." One might say, we suppose, that a FERC rate requirement is imposed "with respect to the disposition" of electric

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ter Power Co. 18 FPC 821, 826 (1957); Northern States Power Co. 18 FPC, at 536-537; Kentucky Utilities Co. 18 FPC 44, 46 (1957); Northern States Power Co. 16 FPC, at 880; Interstate Power Co. 15 FPC 1355, 1356-1357 (1956); Rockland Light & Power Co. 13 FPC, at 1302; Wisconsin River Power Co. 8 FPC 1111, 1112 (1949); In re Oklahoma Gas & Electric Co. 5 FPC 52, 54 (1946); Montana-Dakota Utilities Co. 3 FPC, at 631; California Electric Power Co. 2 FPC 1099, 1100 (1941); Montana-Dakota Utilities Co. 2 FPC 1027, 1028 (1941); Otter Tail Power Co. 2 FPC 1022, 1024-1025 (1941); Nevada-California Electric Co. 2 FPC 956, 957 (1941); Otter Tail Power Co. 2 FPC, at 937; In re Montana-Dakota Utilities Co. 2 FPC 350, 356 (1941); Sierra Pacific Power Co. 2 FPC 839, 841 (1940); Montana-Dakota Utilities Co. 2 FPC 831, 833 (1940).

Only a few orders involved § 301 (accounting requirements) and § 304 (reporting requirements). See Appalachian Power Co. 28 FPC 1199, 1223-1237 (1962); Jersey Central Power & Light Co. 14 FPC 858, 859 (1955); Metropolitan Edison Co. 14 FPC 736, 737 (1955); In re Arkansas Power & Light Co. 8 FPC 106, 127-128 (1949); Northern Indiana Public Service Co. 4 FPC 1070, 1071 (1945); In re Superior Water, Light & Power Co. 3 FPC 254, 257 (1942).

[2] **[2g]** The slight indication in the legislative history that conferees who added the phrase "or any other subject matter" might have intended such a general conflicts provision, cf. HR Conf Rep No. 1903, 74th Cong, 1st Sess, 75 (1935), is contradicted by the fact that their revision eliminated the word "or" that had previously appeared before "facilities," rather than the "or" that introduced the fourth category. Compare id., at 63 with S 2796, 74th Cong, 1st Sess, 292 (in House, June 13, 1935), and S 2796, 74th Cong, 1st Sess, 295 (in Senate, May 13, 1935). In any case, the legislative history is overborne by the text.

power—though it does some violence to the interpretive rule of ejusdem generis to say that electric power qualifies as an "other subject matter" at the end of a list that includes securities, capital assets, and facilities, see, e.g., Harrison v PPG Industries, Inc. 446 US 578, 588, 64 L Ed 2d 525, 100 S Ct 1889 (1980); id., at 601, 64 L Ed 2d 525, 100 S Ct 1889 (Rehnquist, J., dissenting); Third National Bank in Nashville

[498 US 85]

v Impac Limited, Inc. 432 US 312, 322, 53 L Ed 2d 368, 97 S Ct 2307 (1977). But even if one accepts that FERC's rate order is a requirement qualifying under § 318, it is still a requirement with respect to a *different* subject matter from (and not, as § 318 requires, "with respect to the same subject matter" as) the acquisition of SOCCO. The combination of SEC requirements with respect to the acquisition of SOCCO and FERC requirements with respect to the disposition of electric power would not bring § 318 into play.[3]

III

[1e, 9] Our conclusion that § 318 has no application to this case does not end review of the FERC order. Remaining to be resolved is the alternative ground relied upon by Judge Mikva's concurrence in the Court of Appeals, Ohio Power Co. v FERC, 279 US App DC, at 337, 880 F2d, at 1410—namely, the argument that FERC's decision violates its own regulation, which provides that where the price of fuel purchased from an affiliate "is subject to the jurisdiction of a regulatory body, such cost shall be deemed to be reasonable and includable" in wholesale rates. 18 CFR § 35.14(a)(7) (1990). Also available, and unresolved by the Court of Appeals, is the argument that the FERC-prescribed rate is not "just and reasonable" because it "traps" costs which the Government itself has approved—disregarding a governmental assurance, possibly implicit in the SEC approvals, that Ohio Power will be permitted to recoup the cost of acquiring and operating SOCCO. Cf. Nantahala Power & Light Co. v Thornburg, 476 US 953, 90 L Ed 2d 943, 106 S Ct 2349 (1986). We express no view on these questions, and leave them to be resolved by the Court of Appeals.

[498 US 86]

The judgment is reversed, and the case remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice **Stevens,** with whom Justice **Marshall** joins, concurring.

While I join the Court's opinion because I am persuaded that its interpretation of the statute is correct, I add this additional explanation of my vote because neither the parties, the interested agencies, nor the Court of Appeals considered the construction of § 318 that the Court adopts today.[1]

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[3] **[1d]** The same conclusion would follow if we regarded the action qualifying for § 318 treatment to be, not Ohio Power's acquisition of SOCCO, but Ohio Power's acquisition of coal (implicit in its acquisition of SOCCO). It remains impossible to find any FERC requirement imposed "with respect to the same" acquisition. The FERC pricing requirement imposed with respect to the *dis*position of electric power is still not pre-empted by § 318.

Even if § 318 were read broadly to give the SEC priority over FERC whenever the requirements of the two agencies conflict, I would come to the same conclusion. The SEC's orders at issue in this case do not conflict with FERC's requirement that Ohio Power recover only the market price of coal from its customers. The SEC's orders approving the creation and capitalization of SOCCO do not require it to pass all coal production costs on to Ohio Power and its affiliates.[2]

At most, these orders establish a ceiling requiring that the price SOCCO charges its affiliates for coal remains at or below its costs. The market price for coal during the time relevant to this proceeding has been less than SOCCO's costs.[3] Consequently, Ohio Power is able to comply with the requirements of both agencies.

There is no risk of conflict between the requirements of the SEC and FERC in this case. The SEC's orders limit the price which Ohio Power pays its supplier—SOCCO. The FERC's order, on the other hand, limits what portion of its fuel costs Ohio Power may pass along to its customers. The two agencies' requirements limit Ohio Power's financial relationships with different parties—its supplier and its customers. The two requirements also concern different aspects of fuel costs—the amount Ohio Power must pay for its fuel and how much of those fuel costs it can recover directly from its customers.

Finally, it is significant that the Court of Appeals' reading of § 318 would create a gap in the regulatory scheme that Congress could not have intended. Congress enacted PUHCA to prevent financial abuses among public utility holding companies and their affiliates. Gulf States Utilities Co. v FPC, 411 US 747, 758, 36 L Ed 2d 635, 93 S Ct 1870 (1973); see also § 1(b) of PUHCA, 15 USC § 79a(b) [15 USCS § 79a(b)]. It entrusted the SEC, the agency with the expertise in financial transactions and corporate finance, with the task of administering the Act. The SEC carries out its duties essentially by monitoring inter-affiliate financial transactions and eliminating potential conflicts of interest. See generally Public Utility Holding Company Act: Hearings on HR 5220, HR 5465, and HR 6134 before the Subcommittee on Energy Conservation and Power of the House Committee on Energy and Commerce, 97th Cong, 2d Sess, 553,

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[1] I agree with the Court that the legislative history provides little guidance in interpreting the scope of § 318's " 'other subject matter' " language. See ante, at 84, n 2, 112 L Ed 2d, at 386. The relevant information provided by the legislative history essentially cancels itself out. The Conference Report on the Public Utility Act contains a statement to the effect that the "or other subject matter" language in § 318 should be read as all inclusive. That Report stated: "The conference substitute [of § 318] is enlarged to include any conflict arising under this bill." HR Conf Rep No. 1903, 74th Cong, 1st Sess, 75 (1935). The revision of § 318 that accompanied that Report, however, contained language that indicates that "or any other subject matter" is a subset of the "acquisition or disposition of" language in that section. That version of § 318 provided: "[i]f, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter . . . ." Id., at 63.

[2] See ante, at 75-76, 112 L Ed 2d, at 381.

[3] See ante, at 76-77, 112 L Ed 2d, at 382.

579-583 (1982). Congress enacted the FPA to regulate the wholesale interstate sale and distribution of electricity.

[498 US 88]

Gulf States Utilities Co. v FPC, supra, at 758, 36 L Ed 2d 635, 93 S Ct 1870. It entrusted the administration of the FPA to the FPC and later FERC as the agency with the proper technical expertise required to regulate energy transmission. One of the FPA's principal goals is to ensure that the rates customers pay for their electricity are "just and reasonable." See §§ 205, 206(a) of the FPA, 16 USC §§ 824d, 824e(a) [16 USCS §§ 824d, 824e(a)].

Congress enacted PUHCA to supplement, not to supplant, the FPA. Yet, this is the effect that the Court of Appeals opinion would have in those areas in which the two agencies' authority overlap. In these overlapping areas, the subject matter would come under the scrutiny of only the SEC despite the difference between the goals and expertise of the two agencies.[4] As the Court of Appeals decision would apply in this case, Ohio Power would be allowed to buy coal at prices that would be higher than those paid by any utility not owned by a holding company, and then pass those higher costs along to its customers. I do not believe that Congress intended to relieve utilities owned by holding companies of substantial technical regulation because of their corporate structure. It intended those utilities to be subject to the regulation of both the SEC and FERC as much as practicable. The Court's construction of § 318 is consistent with this goal.

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[4] For example, §§ 9 and 10 of PUHCA, 15 USC §§ 79i, 79j [15 USCS §§ 79i, 79j], require SEC approval before a holding company and any of its affiliates acquire any securities or assets of a utility. The SEC review of such a merger seeks, among other things, to avoid undue concentration of control over utilities. See 15 USC § 79j(b) [15 USCS § 79j(b)]. Section 203 of the FPA, 16 USC § 824(b) [16 USCS § 824(b)], requires FERC to approve a public utility's sale, lease, merger, or consolidation of its facilities. FERC's goals under § 203 of the FPA are to maintain adequate service and coordination of facilities. See Savannah Elec. & Power Co. 42 FERC ¶ 61,240, p 61,778 (1988). Under the Court of Appeals' interpretation of § 318, FERC review of any matter involved in a sale of part or all of a utility's facilities to a holding company would be improper despite the differing focus and goals of the two agencies.

MEMORANDUM CASES

No. 90-560. Continental Airlines Holdings, Inc., et al., Petitioners v American General Corporation, et al.

498 US 953, 112 L Ed 2d 390, 111 S Ct 376.

November 2, 1990. The petition for writ of certiorari to the Supreme Court of Delaware in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 575 A2d 1160.

No. A-327. Janice G. Clark, et al., Applicants v Charles "Buddy" Roemer, Governor of Louisiana, et al.*

498 US 953, 112 L Ed 2d 390, 111 S Ct 376.

November 2, 1990. The application for an injunction and stay of orders of the United States District Court for the Middle District of Louisiana, case No. 86-435-A, presented to Justice Scalia, and by him referred to the Court, is granted in part. Louisiana state officials are enjoined from holding elections scheduled for November 6 and December 8, 1990, for judicial offices created by acts which the District Court found had not been precleared in violation of Section 5 of the Voting Rights Act of 1965, 79 Stat 439, as amended, 42 USC § 1973c [42 USCS § 1973c]. Specifically, these judgeships are those listed in Part II of the District Court's order of October 22, 1990, pp 3-4, excepting Division B of the 20th Judicial District, which the District Court upon reconsideration found to have been precleared. See District Court order of October 31, 1990, p 15, n 42. In all other respects the application is denied.

This order is further conditioned upon the timely docketing of a statement as to jurisdiction in the above-entitled appeal. If such a statement as to jurisdiction is filed, this order is to remain in effect pending this Court's action on the appeal. If the judgments are affirmed, or the appeal is dismissed, this order shall terminate automatically. In the event probable jurisdiction is noted, or the judgments are vacated or reversed, this order shall remain in effect pending the sending down of the judgment of this Court.

Justice White dissents.

Justice Blackmun, concurring in part and dissenting in part.

I would deny the application in its entirety and therefore dissent from those provisions of the above order which grant injunctive relief.

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* Editor's Note: For modification of this order, see 112 L Ed 2d, at page 391, infra.

No. 89-1862. Daniel J. McCarthy, Director, California Department of Corrections, Petitioner v Roulette Blair

498 US 954, 112 L Ed 2d 391, 111 S Ct 377.

November 5, 1990. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Ninth Circuit with directions that it instruct the United States District Court for the Central District of California to vacate its order and dismiss the petition for a writ of habeas corpus as moot. United States v Munsingwear, Inc. 340 US 36, 95 L Ed 36, 71 S Ct 104 (1950).

No. 89-7496. Angel Rivera-Feliciano, Petitioner v United States

498 US 954, 112 L Ed 2d 391, 111 S Ct 377.

November 5, 1990. On petition for writ of certiorari to the United States Court of Appeals for the First Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the First Circuit for further consideration in light of Grady v Corbin, 495 US 508, 109 L Ed 2d 548, 110 S Ct 2084 (1990).

Same case below, 876 F2d 209.

No. ——. Jessie E. Davis, Petitioner v Illinois Department of Children and Family Services, et al.

498 US 954, 112 L Ed 2d 391, 111 S Ct 377.

November 5, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. A-327. Janice G. Clark, et al., Applicants v Charles "Buddy" Roemer, Governor of Louisiana, et al.

498 US 954, 112 L Ed 2d 391, 111 S Ct 399.

November 5, 1990. The motion of appellees for modification of the order of Court entered November 2, 1990, is granted, and the order is modified as follows:

The application for an injunction and stay of orders of the United States District Court for the Middle District of Louisiana, case No. 86-435-A, presented to Justice Scalia and by him referred to the Court, is granted in part. Louisiana state officials are enjoined from holding elections scheduled for November 6 and December 8, 1990, for judicial offices created by acts which the District Court found had not been precleared in violation of Section 5 of the Voting Rights Act of 1965, 79 Stat 439, as amended, 42 USC § 1973c [42 USCS § 1973c]. These judgeships are those listed in Part II of the District Court's order of October 22, 1990, pp 3-4, excepting Division B of the 20th Judicial District, which the District Court upon reconsideration found to have been precleared, and Division D of the 34th Judicial District, which the parties and the Solicitor General agree the Attorney General precleared by letter of October 10, 1989. Specifically, those judgeships for which an election is enjoined are:

(1) District Courts:

4th District, Divisions F & G;

6th District, Division B;

14th District, Divisions E, F, G, & H;

16th District, Division G;

21st District, Division F;

22nd District, Division G;

24th District, Division P;

26th District, Division E;

40th District, Division C;

(2) Courts of Appeal:

All judgeships authorized by 1990 La Acts, No. 8, including

(a) Second Circuit Court of Appeal, District 1, Division C; and

(b) Second Circuit Court of Appeal, District 3, Division C.

In all other respects the application is denied.

This order is further conditioned upon the timely docketing of a statement as to jurisdiction in the above-entitled appeal. If such a statement as to jurisdiction is filed, this order is to remain in effect pending this Court's action on the appeal. If the judgments are affirmed, or the appeal is dismissed, this order shall terminate automatically. In the event probable jurisdiction is noted, or the judgments are vacated or reversed, this order shall remain in effect pending the sending down of the judgment of this Court.

Justice White dissents.

Justice Blackmun, concurring in part and dissenting in part.

I would deny the application in its entirety and therefore dissent from those provisions of the above order which grant injunctive relief.

No. D-904. In the Matter of Disbarment of Thomas Lawrence Root

498 US 956, 112 L Ed 2d 392, 111 S Ct 381.

November 5, 1990. Disbarment order entered.

No. D-913. In the Matter of Disbarment of Isaiah White Williams

498 US 956, 112 L Ed 2d 392, 111 S Ct 381.

November 5, 1990. Disbarment order entered.

No. D-916. In the Matter of Disbarment of Robert Bruce Johnstone

498 US 956, 112 L Ed 2d 392, 111 S Ct 382.

November 5, 1990. Disbarment order entered.

No. D-947. In the Matter of Disbarment of Howard A. Pattison

498 US 956, 112 L Ed 2d 393, 111 S Ct 382.

November 5, 1990. It is ordered that Howard A. Pattison, of Athens, Texas, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-948. In the Matter of Disbarment of Howard Leslie Perlow

498 US 956, 112 L Ed 2d 393, 111 S Ct 382.

November 5, 1990. It is ordered that Howard Leslie Perlow, of Baltimore, Maryland, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-949. In the Matter of Disbarment of Jim L. Wilson

498 US 956, 112 L Ed 2d 393, 111 S Ct 382.

November 5, 1990. It is ordered that Jim L. Wilson, of Tifton, Georgia, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-950. In the Matter of Disbarment of Norman Bie, Jr.

498 US 956, 112 L Ed 2d 393, 111 S Ct 382.

November 5, 1990. It is ordered that Norman Bie, Jr., of Largo, Florida, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-951. In the Matter of Disbarment of Grant Paul Jones

498 US 956, 112 L Ed 2d 393, 111 S Ct 382.

November 5, 1990. It is ordered that Grant Paul Jones, of Seattle, Washington, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 109, Original. State of Oklahoma and State of Texas, Plaintiffs v State of New Mexico

498 US 956, 112 L Ed 2d 393, 111 S Ct 380, reh den (US) 115 L Ed 2d 1109, 112 S Ct 27.

November 5, 1990. The Report of the Special Master is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days.

Replies thereto, with supporting briefs, may be filed within 30 days.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 957, 112 L Ed 2d 394, 111 S Ct 383.

November 5, 1990. The motion of respondent to dismiss the writ of certiorari as improvidently granted is denied.

No. 89-1965. Cottage Savings Association, Petitioner v Commissioner of Internal Revenue

498 US 957, 112 L Ed 2d 394, 111 S Ct 383.

November 5, 1990. The motion of petitioner to dispense with printing the joint appendix is granted.

No. 90-96. Frederick A. Siegert, Petitioner v H. Melvyn Gilley

498 US 957, 112 L Ed 2d 394, 111 S Ct 383.

November 5, 1990. The motion of petitioner to proceed further herein in forma pauperis is denied.

No. 90-464. Bituminous Coal Operators' Association, Inc., Petitioner v United Mine Workers of America, International Union, by Thomas Rabbit, Trustee ad Litem, et al.

498 US 957, 112 L Ed 2d 394, 111 S Ct 383.

November 5, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1821. Charles Z. Stevens, III, Petitioner v Department of the Treasury, et al.

498 US 957, 112 L Ed 2d 394, 111 S Ct 383.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted.

Same case below, 897 F2d 526.

No. 90-68. Eddie S. Ylst, Warden, Petitioner v Owen Duane Nunnemaker

498 US 957, 112 L Ed 2d 394, 111 S Ct 384.

November 5, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 904 F2d 473.

No. 89-1736. Russell Hobson, Petitioner v United States

498 US 957, 112 L Ed 2d 395, 111 S Ct 384.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1267.

No. 89-1806. United States Army, et al., Petitioners v Perry J. Watkins

498 US 957, 112 L Ed 2d 395, 111 S Ct 384.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 875 F2d 699.

No. 89-5586. Charles J. Palmer and Randolph Reeves, Petitioners v Frank O. Gunter, et al.

498 US 957, 112 L Ed 2d 395, 111 S Ct 384.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 881 F2d 1080.

No. 89-7596. Clyde Alton Charles, Petitioner v Hilton Butler, Warden, et al.

498 US 957, 112 L Ed 2d 395, 111 S Ct 384.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 894 F2d 718.

No. 89-7659. Charles Edward Patterson, Petitioner v United States

498 US 958, 112 L Ed 2d 395, 111 S Ct 384.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 149.

No. 90-176. Alfred R. Kuennen, Petitioner v United States

498 US 958, 112 L Ed 2d 395, 111 S Ct 385.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 901 F2d 103.

No. 90-217. Judith A. Brown, et al., Petitioners v Elizabeth Blackwell Health Center for Women, et al.

498 US 958, 112 L Ed 2d 396, 111 S Ct 385.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 898 F2d 142.

No. 90-259. William Lowary, et al., Petitioners v Lexington Teachers Association, et al.

498 US 958, 112 L Ed 2d 396, 111 S Ct 385.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 903 F2d 422.

No. 90-300. Ricky Allen Hays, Petitioner v United States

498 US 958, 112 L Ed 2d 396, 111 S Ct 385.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 515.

No. 90-310. Ameday J. Migliorini, Petitioner v Director, Office of Workers' Compensation Programs

498 US 958, 112 L Ed 2d 396, 111 S Ct 385.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 898 F2d 1292.

No. 90-373. KPMG Peat Marwick, Petitioner v W. David Holloway, et al.

498 US 958, 112 L Ed 2d 396, 111 S Ct 386.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 900 F2d 1485.

No. 90-431. Dispatch Printing Company, Petitioner v Ronald L. Solove, Judge, Franklin County, Ohio, Court of Common Pleas, et al.

498 US 958, 112 L Ed 2d 396, 111 S Ct 386.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 52 Ohio St 3d 6, 556 NE2d 439.

No. 90-432. James N. Perry, Petitioner v Prudential-Bache Securities, Inc.

498 US 958, 112 L Ed 2d 397, 111 S Ct 386.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 696.

No. 90-437. Harris A. Grote, Petitioner v Trans World Airlines, Inc., et al.

498 US 958, 112 L Ed 2d 397, 111 S Ct 386.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 1307.

No. 90-438. Charles Stewart, Petitioner v Dorothy Morris, et al.

498 US 958, 112 L Ed 2d 397, 111 S Ct 386.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1543.

No. 90-439. James Bias, as Personal Representative of the Estate of Leonard Kevin Bias, Deceased, Petitioner v Advantage International, Inc., et al.

498 US 958, 112 L Ed 2d 397, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 391, 905 F2d 1558.

No. 90-440. Karen L. Lunn, Petitioner v Time Insurance Company

498 US 958, 112 L Ed 2d 397, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of New Mexico denied.

Same case below, 110 NM 73, 792 P2d 405.

No. 90-446. W. R. Benintendi, et ux., Petitioners v Union National Bank of Little Rock, et al.

498 US 959, 112 L Ed 2d 397, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the Court of Appeals of Oklahoma, Third Division, denied.

No. 90-454. Sequoia Books, Inc., dba Denmark II, Petitioner v Dallas Ingemunson, State's Attorney of Kendall County, Illinois, and Kendall County, Illinois

498 US 959, 112 L Ed 2d 398, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 901 F2d 630.

No. 90-460. Bruce E. Wallis, et ux., Petitioners v Justice Oaks II, Ltd., et al.

498 US 959, 112 L Ed 2d 398, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 1544.

No. 90-462. James Thomas Sloan, Jr., Frederick J. Farrer, and Gary C. Newton, Petitioners v G & G Manufacturing Inc.

498 US 959, 112 L Ed 2d 398, 111 S Ct 387.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 953.

No. 90-467. Charles A. Fahrig, et ux., Petitioners v William H. Wolff, Judge, et al.

498 US 959, 112 L Ed 2d 398, 111 S Ct 388.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 48 Ohio St 3d 709, 550 NE2d 478.

No. 90-474. Joseph M. Ward, Petitioner v Daily Reflector, Inc., and Alvin Taylor

498 US 959, 112 L Ed 2d 398, 111 S Ct 388.

November 5, 1990. Petition for writ of certiorari to the Court of Appeals of North Carolina denied.

Same case below, 97 NC App 668, 390 SE2d 184.

No. 90-475. Arthur Falkner, et ux., Petitioners v United States District Court for the Southern District of Florida

498 US 959, 112 L Ed 2d 398, 111 S Ct 388, reh den 498 US 1042, 112 L Ed 2d 704, 111 S Ct 716.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-481. 601 Properties, Inc., Petitioner v City of Dayton, Ohio

498 US 959, 112 L Ed 2d 398, 111 S Ct 388.

November 5, 1990. Petition for

writ of certiorari to the Court of Appeals of Ohio, Montgomery County, denied.

No. 90-491. Hector Rivera Cruz, Secretary of Justice of Puerto Rico, Petitioner v Playboy Enterprises, Inc., et al.

498 US 959, 112 L Ed 2d 399, 111 S Ct 388.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 906 F2d 25.

No. 90-533. In Re Frederick W. Kantor, Petitioner

498 US 959, 112 L Ed 2d 399, 111 S Ct 389.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 907 F2d 157.

No. 90-547. Kenneth B. Quansah, Jr., Petitioner v City of New York, et al.

498 US 959, 112 L Ed 2d 399, 111 S Ct 389.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1556.

No. 90-579. Sylvester R. Woods, Jr., Petitioner v United States

498 US 959, 112 L Ed 2d 399, 111 S Ct 389.

November 5, 1990. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 214.

No. 90-5071. Bradley Summers, Petitioner v United States

498 US 959, 112 L Ed 2d 399, 111 S Ct 389.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 615.

No. 90-5275. Leslie L. Sack, Petitioner v North Dakota, et al.

498 US 960, 112 L Ed 2d 399, 111 S Ct 389.

November 5, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5432. Ricky Dawn, Petitioner v United States

498 US 960, 112 L Ed 2d 400, 111 S Ct 389.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 897 F2d 1444.

No. 90-5524. Rose Meckley, Petitioner v Federal Correctional Institution, Alderson, et al.

498 US 960, 112 L Ed 2d 400, 111 S Ct 390.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1530.

No. 90-5661. Ernest Smallwood, Petitioner v E-Systems, Inc., et al.

498 US 960, 112 L Ed 2d 400, 111 S Ct 390.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 905 F2d 1535.

No. 90-5703. Jennie Amodeo, Petitioner v Columbia Broadcasting System, et al.

498 US 960, 112 L Ed 2d 400, 111 S Ct 390, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 34.

No. 90-5704. Robert Hebel, Petitioner v Jerry D. Gilmore, Warden

498 US 960, 112 L Ed 2d 400, 111 S Ct 390.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-5707. John Matthew Toomey, Petitioner v Bill J. Bunnell, Warden

498 US 960, 112 L Ed 2d 400, 111 S Ct 390.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 741.

No. 90-5708. John Vaisey, Petitioner v Lloyd Haugh

498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

November 5, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

No. 90-5709. Harold Smith, Petitioner v John MacDonald

498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

November 5, 1990. Petition for writ of certiorari to the Court of Appeals of Tennessee, Middle Division, denied.

No. 90-5710. Albert Standard, Petitioner v Larry Burton, Warden, et al.

498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5711. Lawrence Broadnax, Frank J. Rivera, and Milos Klvana, Petitioners v Los Angeles County Municipal Court, et al.

498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5717. Richard Terrazas, Petitioner v California

498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

No. 90-5732. William Maurice Cox, Petitioner v Midge Carroll, Warden

498 US 960, 112 L Ed 2d 401, 111 S Ct 391, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5733. James Tindall, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 960, 112 L Ed 2d 401, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1114.

No. 90-5734. John Rust, Petitioner v Frank O. Gunter, et al.

498 US 960, 112 L Ed 2d 402, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5738. Lawrence Sparks, Petitioner v John Jabe, Warden

498 US 961, 112 L Ed 2d 402, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 734.

No. 90-5741. Roy A. Day, Petitioner v James L. Johnson, et al.

498 US 961, 112 L Ed 2d 402, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-5749. Eugene Lipofsky, Petitioner v New York State Workers Compensation Board, et al.

498 US 961, 112 L Ed 2d 402, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5754. Eldric Rondell Haskins, Petitioner v California

498 US 961, 112 L Ed 2d 402, 111 S Ct 392.

November 5, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-5795. Everett Young, Petitioner v United States

498 US 961, 112 L Ed 2d 402, 111 S Ct 393, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 907 F2d 156.

No. 90-5827. Donnie Shafer, Petitioner v Hal Stratton, Attorney General of New Mexico

498 US 961, 112 L Ed 2d 402, 111 S Ct 393.

November 5, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 906 F2d 506.

No. 90-5838. Anderson Belvin, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 393.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1226.

No. 90-5840. Thomas P. Attson, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 393.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 1427.

No. 90-5842. Charles F. Darlington, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 393, reh den (US) 116 L Ed 2d 475, 112 S Ct 458.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1472.

No. 90-5845. Jackie L. Banks, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 393.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1576.

No. 90-5847. Ricardo Duarte, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 394.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 268.

No. 90-5852. Andes-Mar Pereira Barbosa, Petitioner v United States

498 US 961, 112 L Ed 2d 403, 111 S Ct 394.

November 5, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 906 F2d 1366.

No. 90-5853. Joaquin H. Rivera-Dominguez, Petitioner v United States

498 US 961, 112 L Ed 2d 404, 111 S Ct 394.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 148.

No. 90-5856. Larry E. Williams, Petitioner v Ohio

498 US 961, 112 L Ed 2d 404, 111 S Ct 394.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 51 Ohio St 3d 58, 554 NE2d 108.

No. 90-5858. David A. Ford, Petitioner v United States

498 US 961, 112 L Ed 2d 404, 111 S Ct 394, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 899 F2d 1228.

No. 90-5863. Jose Ramon Hernandez, Petitioner v United States

498 US 961, 112 L Ed 2d 404, 111 S Ct 394.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1469.

No. 90-5864. Keith Lynn Jenkins, Petitioner v United States

498 US 962, 112 L Ed 2d 404, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 904 F2d 549.

No. 90-5867. James Martin, Jr., Petitioner v United States

498 US 962, 112 L Ed 2d 404, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 908 F2d 969.

No. 90-5879. Catherine Louise Robertson, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 901 F2d 733.

No. 90-5881. Maria Teresa Carballo, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-5883. Larry Michael Farber, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5884. Gary Anthony Didio, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 395.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1477.

No. 90-5893. James Ellsworth, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-5894. Benjamin West, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-5895. Stan Musial Trujillo, Petitioner v United States

498 US 962, 112 L Ed 2d 405, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Tenth Circuit denied.

Same case below, 906 F2d 1456.

No. 90-5902. Owen Franklin Silvious, Petitioner v United States

498 US 962, 112 L Ed 2d 406, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-5905. Maurice C. Proctor, Petitioner v United States

498 US 962, 112 L Ed 2d 406, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 724.

No. 90-5913. William David Hodge, Petitioner v James C. Yarborough, Warden

498 US 962, 112 L Ed 2d 406, 111 S Ct 396.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-5915. Tyrone Love, Petitioner v United States

498 US 962, 112 L Ed 2d 406, 111 S Ct 397.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-5925. Jackie Edward Messer, Petitioner v United States

498 US 962, 112 L Ed 2d 406, 111 S Ct 397.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1140.

No. 90-41. Wisconsin, Petitioner v Lionel D. Walker

498 US 962, 112 L Ed 2d 406, 111 S Ct 397.

November 5, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Wisconsin denied.

Same case below, 154 Wis 2d 158, 453 NW2d 127.

No. 90-451. Public Employees Retirement System of Ohio, Petitioner v June M. Betts

498 US 963, 112 L Ed 2d 407, 111 S Ct 397.

November 5, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 1380.

No. 90-540. Vincent J. Vaccaro, Petitioner v Thomas C. Jorling, Commissioner of New York State Department of Environmental Conservation

498 US 963, 112 L Ed 2d 407, 111 S Ct 397.

November 5, 1990. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 151 App Div 2d 34, 546 NYS2d 470.

No. 90-550. East Asiatic Co., Inc., et al., Petitioners v RSR Corporation, et al.

498 US 963, 112 L Ed 2d 407, 111 S Ct 398.

November 5, 1990. The motion of Government of Denmark for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the Court of Appeals of Washington, Division 1, denied.

Same case below, 57 Wash App 1007.

No. 90-5156. Nicolosa Barnes, Petitioner v Dallas County Child Welfare Unit of the Texas Department of Human Resources

498 US 963, 112 L Ed 2d 407, 111 S Ct 398.

November 5, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fifth District, denied. Justice Blackmun would grant certiorari.

No. 90-5416. Jeffrey Antoine, Petitioner v United States

498 US 963, 112 L Ed 2d 407, 111 S Ct 398.

November 5, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White would grant certiorari.

Same case below, 906 F2d 1379.

No. 90-5434. Jose Guadalupe Vargas-Victoria, Petitioner v United States

498 US 963, 112 L Ed 2d 407, 111 S Ct 398.

November 5, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Ninth Circuit denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 902 F2d 1580.

No. 90-5641. Danial Siebert, Petitioner v Alabama

498 US 963, 112 L Ed 2d 408, 111 S Ct 398.

November 5, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 562 So 2d 600.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5643. In Re Ronnie Lee Alston, Petitioner

498 US 957, 112 L Ed 2d 408, 111 S Ct 399, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

November 5, 1990. The petition for writ of mandamus and/or prohibition is denied.

No. 89-7818. William A. MacGuire, Petitioner v Alan Rasmussen

498 US 963, 112 L Ed 2d 408, 111 S Ct 399.

November 5, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 841, 112 L Ed 2d 89, 111 S Ct 120.

No. 90-5084. William Lebron Church, Petitioner v C. E. Thompson, et al.

498 US 963, 112 L Ed 2d 408, 111 S Ct 399.

November 5, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 860, 112 L Ed 2d 131, 111 S Ct 166.

No. 89-1784. Insurance Company of the State of Pennsylvania, et al., Petitioners v Ben Cooper, Inc.

498 US 964, 112 L Ed 2d 408, 111 S Ct 425.

November 13, 1990. The United States, whose motion to intervene filed in this Court on September 28, 1990, was granted, has raised a question concerning the Court of Appeals' jurisdiction over this case and hence a question about our own jurisdiction. Motion of the United States to Intervene and Brief of the United States, pp 9-17. Because the Court of Appeals should address the jurisdictional issue in the first instance, we vacate the judgment of the United States Court of Appeals for the Second Circuit and remand the case for consideration of the jurisdictional issue raised by the United States.

No. 89-1951. Delta Traffic Service, Inc., et al., Petitioners v Appco Paper and Plastics Corporation

498 US 964, 112 L Ed 2d 409, 111 S Ct 425.

November 13, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Second Circuit. The petition for writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of Maislin Industries, U.S., Inc. v Primary Steel, Inc. 497 US 116, 111 L Ed 2d 94, 110 S Ct 2759 (1990).

Same case below, 893 F2d 472.

No. 90-5659. Randolph Reeves, Petitioner v Nebraska

498 US 964, 112 L Ed 2d 409, 111 S Ct 425.

November 13, 1990. On petition for writ of certiorari to the Supreme Court of Nebraska. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Supreme Court of Nebraska for further consideration in light of Clemons v Mississippi, 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441 (1990).

Same case below, 234 Neb 711, 453 NW2d 359.

No. 8, Original. State of Arizona, Plaintiff v State of California, et al.

498 US 964, 112 L Ed 2d 409, 111 S Ct 450.

November 13, 1990. It is ordered that Frank McGarr, Esquire, of Chicago, Illinois, be appointed Special Master in place of Robert B. McKay, deceased.

The Special Master shall have authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

Justice Marshall took no part in the consideration or decision of this order.

No. 90-394. Bill Clinton, Governor of Arkansas, et al., Appellants v M. C. Jeffers, et al.

498 US 965, 112 L Ed 2d 410, 111 S Ct 425.

November 13, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-5759. In Re J. David Golub, Petitioner

498 US 965, 112 L Ed 2d 410, 111 S Ct 426.

November 13, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until December 4, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

Justice Marshall, Justice Blackmun, and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co., Inc., 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of mandamus without reaching the merits of the motion to proceed in forma pauperis.

No. 90-5765. Ned N. Cary, Jr., Petitioner v David Kirk, et al.

498 US 965, 112 L Ed 2d 410, 111 S Ct 426.

November 13, 1990. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until December 4, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

Justice Marshall, Justice Blackmun, and Justice Stevens, dissenting.

For the reasons expressed in Brown v Herald Co., Inc. 464 US 928, 78 L Ed 2d 301, 104 S Ct 331 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

No. 90-285. Litton Financial Printing Division, a Division of Litton Business Systems, Inc., Petitioner v National Labor Relations Board, et al.

498 US 966, 112 L Ed 2d 410, 111 S Ct 426.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted limited to Question 2 presented by the petition.

Same case below, 893 F2d 1128.

No. 90-5358. Thomas Braxton, Petitioner v United States

498 US 966, 112 L Ed 2d 410, 111 S Ct 426.

November 13, 1990. Motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted.

Same case below, 903 F2d 292.

No. 89-7589. Sandy Michael Nace, Petitioner v Pennsylvania

498 US 966, 112 L Ed 2d 411, 111 S Ct 426.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

Same case below, 524 Pa 323, 571 A2d 1389.

No. 89-7594. Leroy Pletten, Petitioner v Constance Newman, et al.

498 US 966, 112 L Ed 2d 411, 111 S Ct 427.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 891 F2d 292.

No. 89-7753. Leonard James Hearn, Vincent Wayne Conner, Richard Maurice Lanxter, James Price, and Patricia Ann Chisolm, Petitioners v United States

498 US 966, 112 L Ed 2d 411, 111 S Ct 427.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 896 F2d 554.

No. 89-7787. Eleazar Villegas, Petitioner v California

498 US 966, 112 L Ed 2d 411, 111 S Ct 427, reh den 498 US 1115, 112 L Ed 2d 1109, 111 S Ct 1027.

November 13, 1990. Petition for writ of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

No. 89-7788. Michael Herbert Weaver, Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary

498 US 966, 112 L Ed 2d 411, 111 S Ct 427.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 896 F2d 126.

No. 90-36. Edward Goldberg, Petitioner v United States

498 US 966, 112 L Ed 2d 411, 111 S Ct 427.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 90-151. River Villa Partnership, et al., Petitioners v Sun Belt Federal Bank, F.S.B.

498 US 966, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 898 F2d 996.

No. 90-291. Matthew Gruber, Petitioner v Board of Medical Examiners of Oregon

498 US 966, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 98 Or App 55, 778 P2d 516.

No. 90-413. Clarence Kimmet and Kara Kimmet, an Infant, by and Through her Parent and Next Friend, Clarence Kimmet, et al., Petitioners v David Ryan, et al.

498 US 966, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-477. William Harding, et al., Petitioners v City of New York Department of Environmental Protection, et al.

498 US 966, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 144.

No. 90-480. Robert E. Netzley, Petitioner v James P. Celebrezze, et al.

498 US 967, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 51 Ohio St 3d 89, 554 NE2d 1292.

No. 90-482. Spang & Company, Petitioner v Matthew A. DelGrosso, et al.

498 US 967, 112 L Ed 2d 412, 111 S Ct 428.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Third Circuit denied.

Same case below, 903 F2d 234.

No. 90-484. Bill Taber, dba Tabers Grass Farm, Petitioner v James C. Pledger, Director, Arkansas Department of Finance and Administration

498 US 967, 112 L Ed 2d 413, 111 S Ct 429, reh den 498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1027.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 302 Ark 484, 791 SW2d 361.

No. 90-490. Henry J. Fant, Petitioner v Board of Trustees, Regional Transit Authority

498 US 967, 112 L Ed 2d 413, 111 S Ct 429.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 50 Ohio St 3d 72, 552 NE2d 639.

No. 90-492. Wisconsin Education Association Council, et al., Petitioners v Wisconsin State Elections Board, et al.

498 US 967, 112 L Ed 2d 413, 111 S Ct 429.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Wisconsin denied.

Same case below, 156 Wis 2d 151, 456 NW2d 839.

No. 90-495. Magee Drilling Company, Petitioner v Arkoma Associates, et al.

498 US 967, 112 L Ed 2d 413, 111 S Ct 429.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 5.

No. 90-500. David J. Laurick, Petitioner v New Jersey

498 US 967, 112 L Ed 2d 413, 111 S Ct 429.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of New Jersey denied.

Same case below, 120 NJ 1, 575 A2d 1340.

No. 90-501. David J. Weinberg, Petitioner v Connecticut

498 US 967, 112 L Ed 2d 413, 111 S Ct 430.

November 13, 1990. Petition for

writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 215 Conn 231, 575 A2d 1003.

No. 90-502. Tom Perdue, Petitioner v J. Mac Barber

498 US 967, 112 L Ed 2d 414, 111 S Ct 430.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 194 Ga App 287, 390 SE2d 234.

No. 90-508. Charlie Sedillo, Petitioner v New Mexico

498 US 967, 112 L Ed 2d 414, 111 S Ct 430.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of New Mexico denied.

No. 90-509. Bob Vieux, et al., Petitioners v East Bay Regional Park District, et al.

498 US 967, 112 L Ed 2d 414, 111 S Ct 430.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 906 F2d 1330.

No. 90-511. Michael Ma, Petitioner v Continental Illinois National Bank and Trust Company

498 US 967, 112 L Ed 2d 414, 111 S Ct 430.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 1073.

No. 90-512. Lamont Warren, Petitioner v Joseph Dwyer

498 US 967, 112 L Ed 2d 414, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 906 F2d 70.

No. 90-514. Onan Corporation, Petitioner v Industrial Steel Container Company

498 US 968, 112 L Ed 2d 414, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 511.

No. 90-518. Robert E. Welsh, Petitioner v Pennsylvania

498 US 968, 112 L Ed 2d 415, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, denied.

Same case below, 394 Pa Super 634, 569 A2d 1387.

No. 90-522. Patrick J. McNamee, et ux., Petitioners v Southern Textile Corporation

498 US 968, 112 L Ed 2d 415, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 963.

No. 90-528. Ventilatoren Stork Hengelo B.V., et al., Petitioners v Forsikringsaktieselskabet Hafnia, aka Hafnia

498 US 968, 112 L Ed 2d 415, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 39.

No. 90-538. Stan Peacock, et ux., Petitioners v City of Murphy, Texas, et al.

498 US 968, 112 L Ed 2d 415, 111 S Ct 431.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 905 F2d 1534.

No. 90-548. David L. Foster, by his Guardian Elizabeth L. Foster, Petitioner v United States Fire Insurance Company

498 US 968, 112 L Ed 2d 415, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1137.

No. 90-553. Barbara J. Gouras (Wade), Petitioner v Burroughs Wellcome Company

498 US 968, 112 L Ed 2d 415, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1529.

No. 90-586. Matthew C. Wax, Petitioner v Pennsylvania

498 US 968, 112 L Ed 2d 415, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 391 Pa Super 314, 571 A2d 386.

No. 90-604. Ernest R. Zerman, et ux., Petitioners v Supreme Court of Florida, et al.

498 US 968, 112 L Ed 2d 416, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1542.

No. 90-5065. Phillip Roderick, Petitioner v Myrna E. Trickey, Director, Division of Classification and Treatment, Missouri Department of Corrections

498 US 968, 112 L Ed 2d 416, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 9.

No. 90-5112. David Sheffer, Petitioner v United States

498 US 968, 112 L Ed 2d 416, 111 S Ct 432.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 896 F2d 842.

No. 90-5176. Ron Kerry Moore, Petitioner v United States

498 US 968, 112 L Ed 2d 416, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5206. Robert Speed, Petitioner v New York

498 US 968, 112 L Ed 2d 416, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 156 App Div 2d 603, 549 NYS2d 110.

No. 90-5210. Cary Lewis Fischer, Petitioner v United States

498 US 969, 112 L Ed 2d 416, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 140.

No. 90-5212. Domingo Rexach, Petitioner v United States

498 US 969, 112 L Ed 2d 417, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 896 F2d 710.

No. 90-5263. Francis Anthony Littriello and Michael Paul Turner, Petitioners v United States

498 US 969, 112 L Ed 2d 417, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 701.

No. 90-5294. Henry Allen Gray, Petitioner v United States

498 US 969, 112 L Ed 2d 417, 111 S Ct 433.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 829.

No. 90-5301. Donnie Rayburn, Petitioner v Georgia

498 US 969, 112 L Ed 2d 417, 111 S Ct 434.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 194 Ga App 676, 391 SE2d 780.

No. 90-5308. Brett C. Kimberlin, Petitioner v United States

498 US 969, 112 L Ed 2d 417, 111 S Ct 434.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 898 F2d 1262.

No. 90-5353. Ronald Keith Spivey, Petitioner v Joe Frank Harris, et al.

498 US 969, 112 L Ed 2d 417, 111 S Ct 434.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1342.

No. 90-5380. Anthony Edwards, Petitioner v United States

498 US 969, 112 L Ed 2d 418, 111 S Ct 434, reh den 498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 21.

No. 90-5412. James Alvin Rhodes, Petitioner v United States

498 US 969, 112 L Ed 2d 418, 111 S Ct 434.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 1532.

No. 90-5498. William Gravatt, Petitioner v United States

498 US 969, 112 L Ed 2d 418, 111 S Ct 434.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5542. Thomas Dion Sheldon, Petitioner v New Mexico

498 US 969, 112 L Ed 2d 418, 111 S Ct 435.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of New Mexico denied.

Same case below, 110 NM 28, 791 P2d 479.

No. 90-5695. Willie Watkins, Petitioner v Department of the Treasury, et al.

498 US 969, 112 L Ed 2d 418, 111 S Ct 435, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1226.

No. 90-5698. Michael Sindram, Petitioner v Lustine Chevrolet, Inc., et al.

498 US 969, 112 L Ed 2d 418, 111 S Ct 435.

November 13, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

No. 90-5727. Sylvester Jones, Petitioner v Eyvon Mendenhall, et al.

498 US 969, 112 L Ed 2d 418, 111 S Ct 435, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Eighth Circuit denied.

No. 90-5736. Lacey Sivak, Petitioner v Idaho

498 US 969, 112 L Ed 2d 419, 111 S Ct 435.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Idaho denied.

No. 90-5739. Aaron Bernard Woods, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 969, 112 L Ed 2d 419, 111 S Ct 435.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 899 F2d 13.

No. 90-5746. Melvin Curtis Ellis, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 970, 112 L Ed 2d 419, 111 S Ct 436.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 1467.

No. 90-5760. Henry Stepler, Petitioner v Ohio Adult Parole Authority, et al.

498 US 970, 112 L Ed 2d 419, 111 S Ct 436, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 1539.

No. 90-5761. Charles Ray Daniels, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 970, 112 L Ed 2d 419, 111 S Ct 436.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5762. John F. Dees, Petitioner v Paul Caspiri, Superintendent, Missouri Eastern Correctional Center

498 US 970, 112 L Ed 2d 419, 111 S Ct 436.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Eighth Circuit denied.

Same case below, 904 F2d 452.

No. 90-5763. William B. Baime, Petitioner v Edward A. Greenly

498 US 970, 112 L Ed 2d 420, 111 S Ct 436.

November 13, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5764. Sara Lynn Davis, Petitioner v Walter Cohen, et al.

498 US 970, 112 L Ed 2d 420, 111 S Ct 436.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 903 F2d 212.

No. 90-5780. William Watson, Petitioner v New Mexico

498 US 970, 112 L Ed 2d 420, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of New Mexico denied.

No. 90-5784. William Schlicher, Petitioner v Steven Davies, et al.

498 US 970, 112 L Ed 2d 420, 111 S Ct 437, reh den 498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5785. Eileen Vey, Petitioner v Ernest D. Preate, et al.

498 US 970, 112 L Ed 2d 420, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5788. Gloria Waters, Petitioner v Georgia

498 US 970, 112 L Ed 2d 420, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 195 Ga App 288, 393 SE2d 280.

No. 90-5790. John Fulford, Petitioner v John Whitley, Warden

498 US 970, 112 L Ed 2d 420, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5792. John R. D. Beazley, Petitioner v California

498 US 970, 112 L Ed 2d 421, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the Court of Appeal of California, Fifth Appellate District, denied.

No. 90-5794. Bartolo Royball, Petitioner v San Antonio Housing Authority, et al.

498 US 970, 112 L Ed 2d 421, 111 S Ct 437.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-5799. Andrew Searcy, Petitioner v Houston Lighting & Power Company, et al.

498 US 970, 112 L Ed 2d 421, 111 S Ct 438, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 718.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 562.

No. 90-5805. Leo X. McKaye, Petitioner v Robert Brown, et al.

498 US 971, 112 L Ed 2d 421, 111 S Ct 438.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 707.

No. 90-5808. Aharon Gagaty, Petitioner v Lori Saland Gagaty

498 US 971, 112 L Ed 2d 421, 111 S Ct 438.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 1022, 835 P2d 38.

No. 90-5809. Gary Lee McColpin, Petitioner v Nola Foulston

498 US 971, 112 L Ed 2d 421, 111 S Ct 438, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 718.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5811. Thomas Gilmore Stewart, Petitioner v Dallas County Health Department, et al.

498 US 971, 112 L Ed 2d 421, 111 S Ct 438.

November 13, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5812. Gwendolyn L. King, Petitioner v United States District Court for the District of Arizona, et al.

498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5813. Gloria Durante, Petitioner v Ohio Civil Rights Commission

498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 1568.

No. 90-5832. Lynn Johnston, Petitioner v Washtenaw County Court Clerk, et al.

498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-5843. Jerry Young, Petitioner v Walter R. Kelly

498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1474.

No. 90-5875. Martha Joyce Ransbottom, Petitioner v United States

498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 743.

No. 90-5878. Sherman S. Weber, Petitioner v California State Bar, et al.

498 US 971, 112 L Ed 2d 422, 111 S Ct 439, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 978.

No. 90-5903. Javier Hincapie Sanchez, Petitioner v United States

498 US 971, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 740.

No. 90-5914. Walter L. Jones, Petitioner v United States, et al.; Walter L. Jones, Petitioner v Judith Gerrie, et al.; Walter L. Jones, Petitioner v United States; Walter L. Jones, Petitioner v United States; Walter L. Jones, Petitioner v United States; Walter L. Jones, Petitioner v Max Wiseman, et al.; Walter L. Jones, Petitioner v United States; Walter L. Jones, Petitioner v United States; and Walter L. Jones, Petitioner v Dennis C. Vacco

498 US 971, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same cases below, 904 F2d 34 (first case) and 912 F2d 462 (sixth case).

No. 90-5918. Robert Thompson, Petitioner v Dale Foltz, Warden

498 US 971, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 151.

No. 90-5919. Marion A. Chaney, Petitioner v Department of Veterans Affairs

498 US 972, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 906 F2d 697.

No. 90-5921. Luigi Aiello, Petitioner v Wisconsin

498 US 972, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District II, denied.

Same case below, 155 Wis 2d 465, 455 NW2d 913.

No. 90-5927. Lawrence Edward Brown, Jr., Petitioner v United States

498 US 972, 112 L Ed 2d 423, 111 S Ct 440.

November 13, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1140.

No. 90-5937. William Leach, aka William Martin, Petitioner v Gary McCaughtry, Superintendent, Waupun Correctional Institution

498 US 972, 112 L Ed 2d 424, 111 S Ct 441.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 911 F2d 1249.

No. 90-5945. Muradija Bermudas, Petitioner v United States

498 US 972, 112 L Ed 2d 424, 111 S Ct 441.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1225.

No. 90-5994. Frank Foe and Walter Woe, et al., Petitioners v Mario Cuomo, et al.

498 US 972, 112 L Ed 2d 424, 111 S Ct 441.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 892 F2d 196.

No. 89-1508. Colorado Interstate Gas Company, Petitioner v Natural Gas Pipe Line Company of America, et al.

498 US 972, 112 L Ed 2d 424, 111 S Ct 441.

November 13, 1990. The motion of Public Citizen for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 885 F2d 683.

No. 90-485. Jason Williams, Petitioner v Pima County, Arizona, et al.

498 US 972, 112 L Ed 2d 424, 111 S Ct 441.

November 13, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division Two, denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 164 Ariz 170, 791 P2d 1053.

No. 90-503. Theola Henson Davis, Petitioner v AT&T Information Systems

498 US 972, 112 L Ed 2d 425, 111 S Ct 442.

November 13, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 904 F2d 703.

No. 90-498. South Carolina, Petitioner v Horace Butler

498 US 972, 112 L Ed 2d 425, 111 S Ct 442.

November 13, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 302 SC 466, 397 SE2d 87.

No. 90-525. Ron Taylor, Commissioner of the Insurance Department for Arkansas, et al., Petitioners v First National Bank of Eastern Arkansas

498 US 972, 112 L Ed 2d 425, 111 S Ct 442.

November 13, 1990. The motion of American Council of Life Insurance for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 907 F2d 775.

No. 90-5677. William John Clark, Petitioner v California

498 US 973, 112 L Ed 2d 425, 111 S Ct 442.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 583, 268 Cal Rptr 399, 789 P2d 127.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5772. John Peoples, Petitioner v Alabama

498 US 973, 112 L Ed 2d 425, 111 S Ct 443.

November 13, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 565 So 2d 1177.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5873. Donald Eugene Petary, Petitioner v Missouri

498 US 973, 112 L Ed 2d 426, 111 S Ct 443.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 790 SW2d 243.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5882. Samuel D. Smith, Petitioner v Missouri

498 US 973, 112 L Ed 2d 426, 111 S Ct 443.

November 13, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 790 SW2d 241.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5980. In Re Jeffrey Gibson, Petitioner

498 US 965, 112 L Ed 2d 426, 111 S Ct 443.

November 13, 1990. The petition for writ of habeas corpus is denied.

No. 90-5775. In Re Carl Doughty and Larry Wilson, Petitioners

498 US 965, 112 L Ed 2d 426, 111 S Ct 443.

November 13, 1990. The petition for writ of mandamus is denied.

No. 90-5779. In Re Robert Kaltenbach, Petitioner

498 US 965, 112 L Ed 2d 426, 111 S Ct 444.

November 13, 1990. The petition for writ of mandamus is denied.

No. 90-5577. Michael Sindram, Petitioner v Howard Wallin, et al.

498 US 973, 112 L Ed 2d 426, 111 S Ct 444.

November 13, 1990. The petition for rehearing is denied.

Former Decision, 498 US 944, 112 L Ed 2d 320, 111 S Ct 356.

No. 90-5578. Michael Sindram, Petitioner v J. James McKenna, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

November 13, 1990. The petition for rehearing is denied.

Former Decision, 498 US 944, 112 L Ed 2d 320, 111 S Ct 356.

No. 90-5699. Michael Sindram, Petitioner v Montgomery County, Maryland, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

November 13, 1990. The petition for rehearing is denied.

Former Decision, 498 US 948, 112 L Ed 2d 327, 111 S Ct 364.

No. 89-1946. Ralph Roger Bergman, Petitioner v Department of Commerce, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 820, 112 L Ed 2d 41, 111 S Ct 67.

No. 89-2006. William A. Roscoe, Petitioner v United States, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 444.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 823, 112 L Ed 2d 47, 111 S Ct 74.

No. 89-7477. Bobbie Lee Adams, III, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 828, 112 L Ed 2d 59, 111 S Ct 86.

No. 89-7617. David Brewer, Petitioner v Ohio

498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 177, 111 S Ct 218.

No. 89-7669. James L. Martin, Petitioner v United States Department of Education, et al.

498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 835, 112 L Ed 2d 73, 111 S Ct 102.

No. 89-7699. Gary Lee McColpin, Petitioner v Clark V. Owens

498 US 973, 112 L Ed 2d 427, 111 S Ct 445.

November 13, 1990. The petition

for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 836, 112 L Ed 2d 75, 111 S Ct 105.

No. 89-7700. James L. Martin, Petitioner v Joseph J. Farnan, Jr.

498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 836, 112 L Ed 2d 76, 111 S Ct 105.

No. 89-7733. Tim E. Conley, Petitioner v Phillip R. Johnson

498 US 973, 112 L Ed 2d 428, 111 S Ct 445.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 837, 112 L Ed 2d 79, 111 S Ct 109.

No. 89-7746. Theresa Mulqueen Skeeter, Petitioner v City of Norfolk, et al.

498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 838, 112 L Ed 2d 81, 111 S Ct 111.

No. 89-7747. Raymond Snell, Petitioner v City and County of Denver, et al.

498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 838, 112 L Ed 2d 81, 111 S Ct 111.

No. 89-7817. James L. Martin, Petitioner v Joseph J. Farnan, Jr.

498 US 973, 112 L Ed 2d 428, 111 S Ct 445.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 841, 112 L Ed 2d 89, 111 S Ct 120.

No. 89-7847. Michael Sindram, Petitioner v N. Richard Kimmel Properties, et al.

498 US 973, 112 L Ed 2d 428, 111 S Ct 446.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 843, 112 L Ed 2d 92, 111 S Ct 123.

No. 89-7848. Michael Sindram, Petitioner v Washington Suburban Sanitary Commission

498 US 974, 112 L Ed 2d 428, 111 S Ct 446.

November 13, 1990. The petition

for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 843, 112 L Ed 2d 92, 111 S Ct 124.

No. 89-7865. Zeron Lewis, Petitioner v Daniel Vasquez, Warden

498 US 974, 112 L Ed 2d 429, 111 S Ct 446.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 844, 112 L Ed 2d 94, 111 S Ct 126.

No. 90-150. Nelson P. Fordham, Petitioner v Office of Personnel Management

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 852, 112 L Ed 2d 111, 111 S Ct 145.

No. 90-216. Walter J. Moeller, Petitioner v United States

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 855, 112 L Ed 2d 117, 111 S Ct 151.

No. 90-227. Harbhajan Singh Atwal, Petitioner v City of Riverside

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 855, 112 L Ed 2d 118, 111 S Ct 152.

No. 90-5021. Francisco H. Guzman, Petitioner v Harry H. Flickinger

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 857, 112 L Ed 2d 123, 111 S Ct 158.

No. 90-5169. Edward A. Ganey, Jr., Petitioner v David Chester

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 864, 112 L Ed 2d 139, 111 S Ct 175.

No. 90-5218. In Re Vernell McKnight, Petitioner

498 US 974, 112 L Ed 2d 429, 111 S Ct 447.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 806, 112 L Ed 2d 195, 111 S Ct 235.

No. 90-5335. Michael Sindram, Petitioner v Richard Garabedi

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 872, 112 L Ed 2d 156, 111 S Ct 194.

No. 90-5351. Michael Sindram, Petitioner v Steuben County, New York, et al.

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 873, 112 L Ed 2d 159, 111 S Ct 197.

No. 90-5354. Theodore Shipes, Petitioner v Jon P. Galley, Warden, et al.

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 873, 112 L Ed 2d 159, 111 S Ct 197.

No. 90-5356. Christopher A. Burger, Petitioner v Walter Zant, Warden

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 908, 112 L Ed 2d 234, 111 S Ct 280.

No. 90-5371. Michael Sindram, Petitioner v Consumer Protection Commission of Prince George's County, et al.

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 874, 112 L Ed 2d 161, 111 S Ct 199.

No. 90-5373. Michael Sindram, Petitioner v Robert Abrams, et al.

498 US 974, 112 L Ed 2d 430, 111 S Ct 448.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 874, 112 L Ed 2d 161, 111 S Ct 199.

No. 90-5409. George J. Guaracino, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 974, 112 L Ed 2d 430, 111 S Ct 449.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 875, 112 L Ed 2d 163, 111 S Ct 202.

No. 90-5410. Michael Sindram, Petitioner v James Ryan, et al.

498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 901, 112 L Ed 2d 218, 111 S Ct 261.

No. 90-5456. Michael Sindram, Petitioner v Robert Sweeney, et al.

498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 903, 112 L Ed 2d 221, 111 S Ct 264.

No. 90-5684. Roger L. Lyle, Petitioner v John Jabe, Warden

498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

November 13, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 906, 112 L Ed 2d 231, 111 S Ct 275.

No. 90-5374. Michael Sindram, Petitioner v Nissan Motor Corporation, et al.

498 US 974, 112 L Ed 2d 431, 111 S Ct 449.

November 13, 1990. The petition for rehearing is denied. The Chief Justice and Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 891, 112 L Ed 2d 194, 111 S Ct 234.

No. A-370 (90-767). Cable News Network, Inc., et al., Petitioners v Manuel Antonio Noriega and United States

498 US 974, 112 L Ed 2d 431, 111 S Ct 450.

November 15, 1990. The application for stay of orders of the United States District Court for the Southern District of Florida, presented to Justice Kennedy and is referred to the Court. Respondents are directed to file with the Clerk of the Court responses to the application for stay and petition for a writ of certiorari, together with proof of service, on or before noon, Saturday, November 17, 1990. Responses may be filed in typewritten form to be replaced with copies prepared in conformity with Rule 33 as soon as possible thereafter.

No. A-360. Raymond Robert Clark, Applicant v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 975, 112 L Ed 2d 431, 111 S Ct 450.

November 16, 1990. The application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution in order to give the applicant time to file a petition for a writ of certiorari and would grant the petition and vacate the death sentence in this case.

No. A-377. Raymond Robert Clark, Applicant v Florida

498 US 975, 112 L Ed 2d 432, 111 S Ct 451.

November 18, 1990. The application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution in order to give the applicant time to file a petition for a writ of certiorari and would grant the petition and vacate the death sentence in this case.

No. A-378. Raymond Robert Clark, Applicant v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 975, 112 L Ed 2d 432, 111 S Ct 452.

November 18, 1990. The application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution in order to give the applicant time to file a petition for a writ of certiorari and would grant the petition and vacate the death sentence in this case.

No. 90-767 (A-370). Cable News Network, Inc., et al., Petitioners v Manuel Antonio Noriega and United States

498 US 976, 112 L Ed 2d 432, 111 S Ct 451.

November 18, 1990. The application to stay restraining orders of the United States District Court for the Southern District of Florida, presented to Justice Kennedy, and by him referred to the Court, is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 917 F2d 1543.

Justice Marshall, with whom Justice O'Connor joins, dissenting.

The issue raised by this petition is whether a trial court may enjoin publication of information alleged to threaten a criminal defendant's right to a fair trial without *any* threshold showing that the information will indeed cause such harm and that suppression is the only means of averting it. The District Court in this case entered an order enjoining petitioner Cable News Network (CNN) from broadcasting taped communications between respondent Manuel Noriega, a defendant in a pending criminal proceeding, and his counsel. United States v Noriega, 752 F Supp 1032 (1990). The court entered this order without any finding that suppression of the broadcast was necessary to protect Noriega's right to a fair trial, reasoning that no such determination need be made unless CNN surrendered the tapes for the court's inspection. The Court of Appeals affirmed this conclusion. 917 F2d 1543 (1990).

In my view, this case is of extraordinary consequence for freedom of the press. Our precedents make unmistakably clear that " '[a]ny prior restraint on expression comes to this Court with a "heavy presumption" against its constitutional validity,' " and that the proponent of this drastic remedy " 'carries a heavy burden of showing justification for [its] imposition.' " Nebraska Press Assn. v Stuart, 427 US 539, 558, 49 L Ed 2d 683, 96 S Ct 2791 (1976), quoting Organization for a Better Austin v Keefe, 402 US 415, 419, 29 L Ed 2d 1, 91 S Ct 1575 (1971) (citations omitted); accord, New York Times Co. v United States, 403 US 713, 714, 29 L Ed 2d 822, 91 S Ct 2140 (1971) (per curiam). I do not see how the prior restraint imposed in this case can be reconciled with these teachings. Even more fundamentally, if the lower courts in this case are correct in their remarkable conclusion that publication can be *automatically* restrained pending application of the demanding test established by Nebraska Press, then I think it is imperative that we reexamine the premises and operation of Nebraska Press itself. I would grant the stay application and the petition for certiorari.

No. 90-422. Glen E. Keller, Jr., as Trustee for the Liquidation of Blinder, Robinson & Co., Inc., Petitioner v Donald L. Walford and Walford, Demaret & Co., Inc.

498 US 977, 112 L Ed 2d 433, 111 S Ct 452.

November 20, 1990. The petition for writ of certiorari to the Court of Appeals of Colorado in the above-entitled case was dismissed today pursuant to Rule 46 of this Ccourt.

Same case below, 793 P2d 620.

No. 90-6166 (A-351). David A. Mapes, Petitioner v Ohio

498 US 977, 112 L Ed 2d 433, 111 S Ct 504.

November 20, 1990. The application for stay of execution of sentence of death, presented to Justice Stevens, and by him referred to the Court, as denied. The petition for a writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution and the petition for a writ of certiorari and vacate the death sentence in this case.

[498 US 89]

SHIRLEY W. IRWIN, Petitioner

v

DEPARTMENT OF VETERANS AFFAIRS et al.

498 US 89, 112 L Ed 2d 435, 111 S Ct 453, reh den 498 US 1075, 112 L Ed 2d 865, 111 S Ct 805

[No. 89-5867]

Argued October 1, 1990. Decided December 3, 1990.

Decision: Suit against VA under Title VII of Civil Rights Act of 1964 held untimely, where suit was filed more than 30 days after notice from EEOC was received at office of attorney who was allegedly absent.

SUMMARY

42 USCS § 2000e-16(c) provides that an employment discrimination complaint against the Federal Government under Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) must be filed within 30 days of receipt of notice of final action taken by the Equal Employment Opportunity Commission (EEOC). An individual complained to the EEOC that the Veterans Administration (VA) had unlawfully discharged him on the basis of his race and physical disability. The EEOC, in dismissing the complaint, sent a letter notice dated March 19, 1987 to both the individual and his attorney, which notice expressly informed them that the individual had a right to file a civil action under Title VII within 30 days of receipt. According to the individual, however, (1) he did not receive the notice until April 7; (2) the notice to his attorney arrived at the attorney's office on March 23, when the attorney was allegedly out of the country; and (3) the attorney allegedly did not learn of the EEOC's action until the attorney's return on April 10. The individual then filed an employment discrimination complaint against the VA, under provisions including Title VII, in the United States District Court for the Western District of Texas on May 6—44 days after the EEOC notice had been received in the attorney's office, but 29 days after the date on which the individual claimed he had received the letter. The VA moved to dismiss on grounds including the District Court's alleged lack of jurisdiction due to the § 2000e-16(c) limit, and the District Court granted the motion. On appeal, the United States Court of Appeals for the Fifth Circuit, in affirming, expressed the view that (1) the 30-day

Briefs of Counsel, p 1225, infra.

period of § 2000e-16(c) begins to run on the date that the EEOC notice is delivered to the offices of formally designated counsel or to the claimant, even if counsel himself or herself does not actually receive the notice until later; (2) the 30-day span operates as an absolute jurisdictional limit; and (3) thus, the District Court could not excuse the individual's late filing (874 F2d 1092).

On certiorari, the United States Supreme Court affirmed. In an opinion by REHNQUIST, Ch. J., joined by BLACKMUN, O'CONNOR, SCALIA, and KENNEDY, JJ., it was held that the individual's complaint filed in the District Court was untimely, because (1) the individual had appeared by his attorney in the prior EEOC administrative proceeding with respect to the individual's claim; (2) under § 2000e-16(c), (a) a notice of final action is received when the EEOC delivers its notice to a claimant or the claimant's attorney, whichever comes first, and (b) there is no material difference between receipt by an attorney and receipt by that attorney's office; and (3) although the principles of equitable tolling generally apply to the § 2000e-16(c) limit, such principles did not extend to the case at hand, which involved what was at best a "garden variety" claim of excusable neglect.

WHITE, J., joined by MARSHALL, J., concurring in part and concurring in the judgment, (1) agreed that the 30-day period under § 2000e-16(c) begins to run when the notice from the EEOC is delivered to either a claimant or the claimant's attorney; but (2) expressed the view that (a) equitable tolling is not available as a defense to the § 2000e-16 limit, and (b) thus, the factual issue as to whether equitable tolling was supported by the circumstances of the case ought not to have been reached.

STEVENS, J., concurring in part and dissenting in part, (1) agreed that (a) the § 2000e-16(c) filing deadline is subject to equitable tolling, and (b) the individual in question had failed to establish a basis for tolling; but (2) expressed the view that (a) Congress intended that the EEOC notice be served on an adverse party such as the individual in question, not on the individual's representative, and (b) accordingly, the Court of Appeals' judgment ought to be reversed, and the case ought to be remanded for resolution of the disputed factual issue as to when the individual had actually received notice from the EEOC.

SOUTER, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

45B Am Jur 2d, Job Discrimination §§ 1888-1904; 51 Am Jur 2d, Limitation of Actions §§ 138-140, 143, 398

21 Federal Procedure, L Ed, Job Discrimination §§ 50:441-50:443

12 Federal Procedural Forms, L Ed, Job Discrimination § 45:176

17 Am Jur Pl & Pr Forms (Rev), Limitation of Actions, Forms 21-112, 162, 168, 169

4 Am Jur Trials 441, Solving Statutes of Limitation Problems; 21 Am Jur Trials 1, Employment Discrimination Action Under Federal Civil Rights Acts

42 USCS § 2000e-16(c)

RIA Employment Coordinator ¶¶ EP-37,830.11, EP-37,845—EP-37,845.19

RIA Employment Discrimination Coordinator ¶¶ 54,024, 54,-105-54,137

US L Ed Digest, Civil Rights § 66; Limitation of Actions §§ 139, 153; Notice § 14

Index to Annotations, Discharge from Employment or Office; Equal Employment Opportunity; Governmental Immunity or Privilege; Limitation of Actions

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Racial discrimination in labor and employment—Supreme Court cases. 28 L Ed 2d 928.

Time limitations of § 706 of Civil Rights Act of 1964, as amended (42 USCS § 2000e-5(f)(1)) for bringing civil action by person aggrieved as subject to tolling because of equitable considerations. 54 ALR Fed 335.

Time requirements for civil action for violation of equal employment opportunity provisions under § 706 of Civil Rights Act of 1964 (42 USC § 2000e-5). 4 ALR Fed 833.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Civil Rights § 66; Limitation of Actions §§ 139, 153; Notice § 14; Statutes §§ 82, 123.5, 149 — Title VII suit against Federal Government — receipt by office of attorney of right-to-sue notice when attorney is absent

1a-1g. Pursuant to 42 USCS § 2000e-16(c), which provides that an employment discrimination complaint against the Federal Government under Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) must be filed within 30 days of receipt of notice of final action taken by the Equal Employment Opportunity Commission (EEOC), an individual's employment discrimination complaint against the Veterans Administration under Title VII is untimely, where the complaint is filed in a Federal District Court 44 days after the individual's right-to-sue notice from the EEOC—a notice which was sent to both the individual and his attorney—was received at the attorney's office when the attorney was allegedly absent, but 29 days after the date on which the individual claims that he personally received the letter, because (1) the individual appeared by his attorney in the prior EEOC administrative proceeding with respect to the individual's claim; (2) under § 2000e-16(c), a notice of final action is received when the EEOC delivers its notice to a claimant or the claimant's attorney, whichever comes first, for (a) § 2000e-16(c) does not specify receipt by a claimant rather than by the claimant's designated representative, (b) Congress has endorsed the sensible practice of providing notification through counsel in the analogous provisions of Rule 5(b) of the Federal Rules of Civil Procedure, and (c) to read the § 2000e-16(c) term "receipt" to mean only "actual receipt by the claimant" would render the general practice of notification through counsel a meaningless exercise; (3) under § 2000e-16(c), there is no material difference between receipt by an attorney and receipt by that attorney's office, for (a) the lower federal courts have consistently held that notice to such an attorney's office, which notice is acknowledged by a representative of that office, qualifies as notice to the client, (b) Rule 5(b) also permits notice to a litigant to be made by delivery of papers to the office of the litigant's attorney, and (c) the practical effect of the contrary rule would be to encourage factual disputes as to when actual notice was received, and thereby to create uncertainty in an area of the law where certainty is much to be desired; and (4) although the principles of equitable tolling generally apply to the § 2000e-16(c) limit, such principles do not extend to the case at hand, which involves what is at best a "garden variety" claim of excusable neglect. (White, Marshall, and Stevens, JJ., dissented in part from this holding.)

Attorneys § 19; Notice § 14; Statutes § 149 — notice to attorney — authority — change in practice

2. Under the United States' system of representative litigation, each party is (1) deemed bound by the action of the party's lawyer-agent, and (2) considered to have notice of all facts, notice of which can be charged upon the attorney; if Congress intends to depart from the common and established practice of

providing notification to counsel, Congress must do so expressly. (Stevens, J., dissented in part from this holding.)

Civil Rights § 66; Evidence § 253; Limitation of Actions § 220; Statutes §§ 82, 91, 193, 200 — presumption that tolling applies — suits against United States — Title VII — strict construction

3a-3c. With respect to the application of the principles of equitable tolling to statutory filing deadlines for civil actions, the same rebuttable presumption in favor of such application to suits against private defendants applies to suits against the United States, for (a) a continuing effort on the United States Supreme Court's part to decide each case on an individual basis, as the Supreme Court appears to have done in the past, would have the disadvantage of continuing unpredictability without the corresponding advantage of greater fidelity to the intent of Congress, (b) once Congress has made a waiver of sovereign immunity, the application of such equitable tolling principles in the same way that those principles are applicable to private suits amounts to little, if any, broadening of the congressional waiver, and (c) such a presumption is likely to be a realistic assessment of legislative intent as well as a practically useful principle of interpretation; Congress may provide otherwise if Congress wishes to do so; the principles of equitable tolling are applicable to 42 USCS § 2000e-16(c)—which provides that an employment discrimination complaint against the Federal Government under Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) must be filed within 30 days of receipt of notice of final action taken by the Equal Employment Opportunity Commission—even though § 2000e-16(c), as a condition to the Federal Government's waiver of sovereign immunity, must be strictly construed; because the time limits imposed by Congress in a suit against the Federal Government involve a waiver of sovereign immunity, no more favorable tolling doctrine may be employed against the Federal Government than is employed in suits between private litigants. (White and Marshall, JJ., dissented in part from this holding.)

United States § 100 — consent to suit

4. A waiver of the United States' sovereign immunity from suit cannot be implied, but must be unequivocally expressed.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Irwin filed a complaint with the Veterans' Administration (VA), claiming that he had been unlawfully fired by the VA on the basis of his race and disability. The VA dismissed the complaint, and the Equal Employment Opportunity Commission (EEOC) affirmed that decision on March 19, 1987, mailing copies of a right-to-sue letter to both Irwin and his attorney. Irwin received the letter on April 7. His attorney received actual notice of the letter on April 10, having been out of the country when it was delivered to his office on March 23. Forty-four days after his attorney's office received the letter and 29 days after Irwin received his copy, he filed an action in the District Court, alleging, inter alia, a violation of Title VII of the Civil Rights Act of 1964. The court dismissed the case for lack of jurisdiction on the ground that the complaint was not filed within the time specified by 42 USC § 2000e-16(c) [42 USCS § 2000e-16(c)], which provides that a complaint against the Federal Government must be filed within 30 days "of receipt of notice of final action taken" by the EEOC. The Court of Appeals affirmed, holding that a notice of final action is "received" when the EEOC delivers its notice to a claimant or his attorney's offices, whichever comes first, and that the 30-day span operates as an absolute jurisdictional limit.

Held:

1. Irwin's complaint was untimely. Section 2000e-16(c) requires that the EEOC's letter be "received" but does not specify that receipt must be by the claimant rather than by his representative. Congress may depart from the common and established practice of providing notification through counsel only if it does so expressly. Irwin's argument that there is a material difference between receipt by an attorney and receipt by his office for purposes of § 2000e-16(c) is rejected. Lower courts have consistently held that notice to an attorney's office which is acknowledged by a representative of that office qualifies as notice to the client, and the practical effect of a contrary rule would be to create uncertainty by encouraging factual disputes about when actual notice was received.

2. Statutes of limitations in actions against the Government are subject to the rebuttable presumption of equitable tolling applicable to suits against private defendants. Applying the same rule amounts to little, if any, broadening of a congressional waiver of sovereign immunity.

3. Irwin's failure to file may not be excused under equitable tolling principles. Federal courts have typically extended equitable relief only sparingly in suits against private litigants, allowing tolling where the claimant has actively pursued his judicial remedies by filing a defective pleading or where he has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. Such equitable tolling principles do not extend to Irwin's claim that his untimely filing should be excused because his attorney was out of the office when the notice was received and he filed within 30 days of the date he personally received notice, which is at best a garden variety claim of excusable neglect.

874 F2d 1092, affirmed.

Rehnquist, C. J., delivered the opinion of the Court, in which Blackmun, O'Connor, Scalia, and Kennedy, JJ., joined. White, J., filed an opinion concurring in part and concurring in the judgment, in which Marshall, J., joined. Stevens, J., filed an opinion concurring in part and dissenting in part. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Jon R. Ker argued the cause for petitioner.

John G. Roberts, Jr. argued the cause for respondents.

Briefs of Counsel, p 1225, infra.

OPINION OF THE COURT

[498 US 90]

Chief Justice **Rehnquist** delivered the opinion of the Court.

In April 1986, petitioner, Shirley Irwin, was fired from his job by the Veterans' Administration (VA), which was subsequently redesignated as respondent Department of Veterans Affairs. Irwin contacted an equal employment opportunity

[498 US 91]

counselor and filed a complaint with the VA, alleging that the VA had unlawfully discharged him on the basis of his race and physical disability. The VA dismissed Irwin's complaint, and the Equal Employment Opportunity Commission (EEOC) affirmed that decision by a letter dated March 19, 1987. The letter, which was sent to both Irwin and his attorney, expressly informed them that Irwin had the right to file a civil action under Title VII of the Civil Rights Act of 1964, 78 Stat 253, as amended, 42 USC § 2000e et seq. [42 USCS §§ 2000e et seq.], within 30 days of receipt of the EEOC notice. According to Irwin, he did not receive the EEOC's letter until April 7, 1987, and the letter to his attorney arrived at the attorney's office on March 23, 1987, while the attorney was out of the country. The attorney did not learn of the EEOC's action until his return on April 10, 1987.

Irwin filed a complaint in the United States District Court for the Western District of Texas on May 6, 1987, 44 days after the EEOC notice was received at his attorney's office, but 29 days after the date on which he claimed he received the letter. The complaint alleged that the VA discriminated against him because of his race, age, and handicap, in violation of 42 USC § 2000e et seq. [42 USCS §§ 2000e et seq.]; 81 Stat 602, as amended, 29 USC § 621 et seq. [29 USCS §§ 621 et seq.]; 87 Stat 390, as amended, 29 USC § 791 et seq. [29 USCS §§ 791 et seq.]; and the First and Fifth Amendments. Respondent VA moved to dismiss, asserting, inter alia, that the District Court lacked jurisdiction because the complaint was not filed within 30 days of the EEOC's decision as specified in 42 USC § 2000e-16(c) [42 USCS § 2000e-16(c)]. The District Court granted the motion.

The Court of Appeals for the Fifth Circuit affirmed. 874 F2d 1092 (1989). The court held that the 30-day period begins to run on the date that the EEOC right-to-sue letter is delivered to the offices of formally designated counsel or to the claimant, even if counsel himself did not actually receive notice until later. Id., at 1094. The Court of Appeals further determined that the 30-day span allotted under § 2000e-16(c)

[498 US 92]

operates as an absolute jurisdictional limit. Id., at 1095. Accordingly, it reasoned that the District Court could not excuse Irwin's late filing because federal courts lacked jurisdiction over his untimely claim. Ibid. That holding is in direct conflict with the decisions of four other Courts of Appeals.[1]

We granted certiorari to determine when the 30-day period under § 2000e-16(c) begins to run and to resolve the Circuit conflict over whether late-filed claims are jurisdictionally barred. 493 US 1069, 107 L Ed 2d 1017, 110 S Ct 1109 (1990).

[1a] Section 2000e-16(c) provides that an employment discrimination complaint against the Federal Government under Title VII must be filed "[w]ithin thirty days of receipt of notice of final action taken" by the EEOC. The Court of Appeals determined that a notice of final action is "received" when the EEOC delivers its notice to a claimant or the claimant's attorney, whichever comes first. Id., at 1094. Petitioner argues that the clock does not begin until the claimant himself has notice of his right to sue.

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[1] See Martinez v Orr, 738 F2d 1107 (CA10 1984); Milam v United States Postal Service, 674 F2d 860 (CA11 1982); Saltz v Lehman, 217 US App DC 354, 672 F2d 207 (1982); and Boddy v Dean, 821 F2d 346, 350 (CA6 1987).

[1b, 2] We conclude that Irwin's complaint filed in the District Court was untimely. As the Court of Appeals observed, § 2000e-16(c) requires only that the EEOC notification letter be "received"; it does not specify receipt by the claimant rather than by the claimant's designated representative. There is no question but that petitioner appeared by his attorney in the EEOC proceeding. Under our system of representative litigation, "each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.' " Link v Wabash R. Co. 370 US 626, 634, 8 L Ed 2d 734, 82 S Ct 1386 (1962) (quoting Smith v Ayer, 101 US 320, 326, 25 L Ed 955 (1880)). Congress has endorsed this sensible practice in the analogous provisions of

[498 US 93]

the Federal Rules of Civil Procedure, which provide that "[w]henever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court." Fed Rule Civ Proc 5(b). To read the term "receipt" to mean only "actual receipt by the claimant" would render the practice of notification through counsel a meaningless exercise. If Congress intends to depart from the common and established practice of providing notification through counsel, it must do so expressly. See Decker v Anheuser-Busch, 632 F2d 1221, 1224 (CA5 1980).

[1c] We also reject Irwin's contention that there is a material difference between receipt by an attorney and receipt by that attorney's office for purposes of § 2000e-16(c). The lower federal courts have consistently held that notice to an attorney's office which is acknowledged by a representative of that office qualifies as notice to the client. See Ringgold v National Maintenance Corp., 796 F2d 769 (CA5 1986); Josiah-Faeduwor v Communications Satellite Corp. 251 US App DC 346, 785 F2d 344 (1986). Federal Rule of Civil Procedure 5(b) also permits notice to a litigant to be made by delivery of papers to the litigant's attorney's office. The practical effect of a contrary rule would be to encourage factual disputes about when actual notice was received, and thereby create uncertainty in an area of the law where certainty is much to be desired.

[1d, 3a] The fact that petitioner did not strictly comply with § 2000e-16(c)'s filing deadline does not, however, end our inquiry. Petitioner contends that even if he failed to timely file, his error may be excused under equitable tolling principles. The Court of Appeals rejected this argument on the ground that the filing period contained in § 2000e-16(c) is jurisdictional, and therefore the District Court lacked authority to consider his equitable claims. The court reasoned that § 2000e-16(c) applies to suits against the Federal Government

[498 US 94]

and thus is a condition of Congress' waiver of sovereign immunity.

Since waivers of sovereign immunity are traditionally construed narrowly, the court determined that strict compliance with § 2000e-16(c) is a necessary predicate to a Title VII suit.

Respondent correctly observes that § 2000e-16(c) is a condition to its waiver of sovereign immunity and thus must be strictly construed. See Library of Congress v Shaw, 478 US 310, 92 L Ed 2d 250, 106 S Ct 2957 (1986). But our previous cases dealing with the effect of time limits in suits against the Government have not been entirely consistent, even though the cases may be distinguished on their facts. In United States v Locke, 471 US 84, 94, n 10, 85 L Ed 2d 64, 105 S Ct 1785 (1985), we stated that we were leaving open the general question of whether principles of equitable tolling, waiver, and estoppel apply against the Government when it involves a statutory filing deadline. But, as Justice White points out in his concurrence, post, at 99, 112 L Ed 2d 446, nearly 30 years earlier in Soriano v United States, 352 US 270, 1 L Ed 2d 306, 77 S Ct 269 (1957), we held the petitioner's claim to be jurisdictionally barred, saying that "Congress was entitled to assume that the limitation period it prescribed meant just that period and no more." 352 US, at 276, 1 L Ed 2d 306, 77 S Ct 269. More recently, in Bowen v City of New York, 476 US 467, 479, 90 L Ed 2d 462, 106 S Ct 2022 (1986), we explained that "we must be careful not to 'assume the authority to narrow the waiver that Congress intended,' or construe the waiver 'unduly restrictively'" (citation omitted).

Title 42 USC § 2000e-16(c) [42 USCS § 2000e-16(c)] provides in relevant part:

> "Within thirty days of receipt of notice of final action taken by . . . the Equal Employment Opportunity Commission . . . an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title. . . ."

The phraseology of this particular statutory time limit is probably very similar to some other statutory limitations on

suits against the Government, but probably not to all of them. In the present statute, Congress said that "[w]ithin thirty days . . . an employee . . . may file a civil action . . . ." In Soriano, supra, at 271, n 1, 1 L Ed 2d 306, 77 S Ct 269, Congress provied that "[e]very claim . . . shall be barred unless the petition . . . is filed . . . within six years . . . ." An argument can undoubtedly be made that the latter language is more stringent than the former, but we are not persuaded that the difference between them is enough to manifest a different congressional intent with respect to the availability of equitable tolling. Thus a continuing effort on our part to decide each case on an ad hoc basis, as we appear to have done in the past, would have the disadvantage of continuing unpredictability without the corresponding advantage of greater fidelity to the intent of Congress. We think that this case affords us an opportunity to adopt a more general rule to govern the applicability of equitable tolling in suits against the Government.

Time requirements in lawsuits between private litigants are customarily subject to "equitable tolling," Hallstrom v Tillamook County, 493 US 20, 27, 107 L Ed 2d 237, 110 S Ct 304 (1989). Indeed, we have held that the statutory time limits applicable to lawsuits against private employers under Title VII are subject to equitable tolling.[2]

[1e, 3b, 4] A waiver of sovereign immunity " 'cannot be implied but must be unequivocally expressed.' " United States v Mitchell, 445 US 535, 538, 63 L Ed 2d 607, 100 S Ct 1349 (1980) (quoting United States v King, 395 US 1, 4, 23 L Ed 2d 52, 89 S Ct 1501 (1969)). Once Congress has made such a waiver, we think that making the rule of equitable tolling applicable to suits against the Government, in the same way that it is applicable to private suits, amounts to little, if any, broadening of the congressional waiver. Such a principle is likely to be a realistic assessment of legislative intent as well as a practically useful principle of interpretation. We therefore hold that the same rebuttable presumption of equitable

tolling applicable to suits against private defendants should also apply to suits against the United States. Congress, of course, may provide otherwise if it wishes to do so.

[1f, 3c] But an examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period,[3] or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.[4] We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. Baldwin County Welcome Center v Brown, 466 US 147, 151, 80 L Ed 2d 196, 104 S Ct 1723 (1984). Because the time limits imposed by Congress in a suit against the Government involve a waiver of sovereign immunity, it is evident that no more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants.

[1g] Petitioner urges that his failure to file in a timely manner should be excused because his lawyer was absent from his office at the time that the EEOC notice was received, and that he thereafter filed within 30 days of the day on which he personally received notice. But the principles of equitable tolling described above do not extend to what is at best a garden variety claim of excusable neglect.

The judgment of the Court of Appeals is accordingly affirmed.

Justice **Souter** took no part in the consideration or decision of this case.

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[2] See Zipes v Trans World Airlines, Inc. 455 US 385, 394, 71 L Ed 2d 234, 102 S Ct 1127 (1982); Crown, Cork & Seal Co. v Parker, 462 US 345, 349, n 3, 76 L Ed 2d 628, 103 S Ct 2392 (1983).

[3] See Burnett v New York Central R. Co. 380 US 424, 13 L Ed 2d 941, 85 S Ct 1050 (1965) (plaintiff timely filed complaint in wrong court); Herb v Pitcairn, 325 US 77, 89 L Ed 1483, 65 S Ct 954 (1945) (same); American Pipe & Construction Co. v Utah, 414 US 538, 38 L Ed 2d 713, 94 S Ct 756 (1974) (plaintiff's timely filing of a defective class action tolled the limitations period as to the individual claims of purported class members).

[4] See Glus v Brooklyn Eastern Dist. Terminal, 359 US 231, 3 L Ed 2d 770, 79 S Ct 760 (1959) (adversary's misrepresentation caused plaintiff to let filing period lapse); Holmberg v Armbrecht, 327 US 392, 90 L Ed 743, 66 S Ct 582, 162 ALR 719 (1946) (same).

SEPARATE OPINIONS

Justice **White,** with whom Justice **Marshall** joins, concurring in part and concurring in the judgment.

Although I agree with the Court that the 30-day period under 42 USC § 2000e-16(c) [42 USCS § 2000e-16(c)] begins to run when the notice from the Equal Employment Opportunity Commission is delivered either to the claimant or the claimant's attorney, I do not join the portion of the opinion holding that the 30-day time period is subject to equitable tolling, see ante, at 93-96, 112 L Ed 2d, at 442-444.

As the Court recognizes, see ante, at 94, 112 L Ed 2d, at 442-443, statutory deadlines for suits against the Government, such as the one in this case, are conditions on the Government's waiver of sovereign immunity. See, e.g., United States v Mottaz, 476 US 834, 841, 90 L Ed 2d 841, 106 S Ct 2224 (1986); United States v Kubrick, 444 US 111, 117-118, 62 L Ed 2d 259, 100 S Ct 352 (1979). As such, they must be " 'strictly observed and exceptions thereto are not to be implied.' " Lehman v Nakshian, 453 US 156, 161, 69 L Ed 2d 548, 101 S Ct 2698 (1981) (quoting Soriano v United States, 352 US 270, 276, 1 L Ed 2d 306, 77 S Ct 269 (1957)); see also Block v North Dakota ex rel. Bd. of Univ. and School Lands, 461 US 273, 287, 75 L Ed 2d 840, 103 S Ct 1811 (1983). In my view, the Court has failed to "strictly observe" the terms of the statute at issue in this case.

Congress did not expressly provide for equitable tolling of the 30-day filing deadline in § 2000e-16(c). The Court, however, holds that like statutes of limitations for suits between private litigants, limitations periods for suits against the Government will now *presumptively* be subject to equitable tolling. Ante, at 95-96, 112 L Ed 2d, at 444. That holding needlessly reverses at least one of this Court's prior decisions and is in tension with several others.

Because of the existence of sovereign immunity, we have traditionally held that the Government's consent to be sued " 'cannot be implied but must be unequivocally expressed.' " United States v Mitchell, 445 US 535, 538, 63 L Ed 2d 607, 100 S Ct 1349 (1980) (quoting United States v King, 395 US 1, 4, 23 L Ed 2d 52, 89 S Ct 1501 (1969)). That rule applies even where there is a contrary presumption for suits

against private defendants. Our decision in Library of Congress v Shaw, 478 US 310, 92 L Ed 2d 250, 106 S Ct 2957 (1986), is instructive on this point. There, we held that the Government was not liable under the federal provisions of Title VII for interest. In reaching that conclusion, we reaffirmed the longstanding rule that despite consent to be sued, the Government will not be liable for interest unless there is a separate explicit waiver to that effect. Id., at 316-317, 92 L Ed 2d 250, 106 S Ct 2957. Although the statute in that case provided that the Government was to be liable "the same as a private person" for "costs," including a "reasonable attorney's fee," we stated that "we must construe waivers strictly in favor of the sovereign . . . and not enlarge the waiver 'beyond what the language requires.' " Id., at 318, 92 L Ed 2d 250, 106 S Ct 2957 (citations omitted). It seems to me that the Court in this case, by holding that the time limit in § 2000e-16(c) is subject to equitable tolling, has done exactly what Shaw proscribes—it has enlarged the waiver in § 2000e-16(c) beyond what the language of that section requires.[1]

Not only is the Court's holding inconsistent with our traditional approach to cases involving sovereign immunity, it directly overrules a prior decision by this Court, Soriano v United States, 352 US 270, 1 L Ed 2d 306, 77 S Ct 269 (1957). The question in Soriano was whether war tolled the statute of limitations for claims against the Government filed in the Court of Claims. In arguing for equitable tolling, the plaintiff there relied on a case in which this Court had held that war had tolled a limitations statute for purposes of private causes of action. Id., at

275, 1 L Ed 2d 306, 77 S Ct 269. The Court was not persuaded, stating that "[t]hat case involved private citizens, not the Government. It has no applicability to claims against the sovereign." Ibid. The Court explained:

> "To permit the application of the doctrine urged by petitioner would impose the tolling of the statute in every time-limit-consent Act passed by the Congress. . . . Strangely enough, Congress would be required to provide expressly in each statute that the period of limitation was not to be extended by war. But Congress was entitled to assume that the limitation period it prescribed meant just that period and no more. With this intent in mind, Congress has passed specific legislation each time it has seen fit to toll such statutes of limitations because of war. And this Court has long decided that limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." Id., at 275-276, 1 L Ed 2d 306, 77 S Ct 269 (footnote omitted).

As in Soriano, here Congress "was entitled to assume that the limitation period it prescribed [in § 2000e-16(c)] meant just that period and no more."

The Court deviates from the above cases because it believes that our decisions concerning time requirements "have not been entirely consistent." Ante, at 94, 112 L Ed 2d, at 443.[2] Even if that belief is well-

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[1] The Court's failure to recognize the importance of sovereign immunity in statutory construction also ignores Brown v GSA, 425 US 820, 48 L Ed 2d 402, 96 S Ct 1961 (1976). In that case, we held that Title VII provisions for federal employees pre-empt other remedies for discrimination in federal employment. We reached that conclusions despite our earlier holding in Johnson v Railway Express Agency, Inc., 421 US 454, 44 L Ed 2d 295, 95 S Ct 1716 (1975), that Title VII provisions for private employees did not pre-empt other discrimination remedies. We found Johnson to be "inapposite" because, among other things, "there were no problems of sovereign immunity in the context of the Johnson case." 425 US, at 833, 48 L Ed 2d 402, 96 S Ct 1961.

[2] The Court also asserts that allowing equitable tolling against the Government "is likely to be a realistic assessment of legislative intent." Ante, at 95, 112 L Ed 2d, at 444. It is unclear, however, why that likelihood, rather than the opposite, is true. The statute here, for example, was enacted in 1972 when the presumption was, as set forth in Soriano v United States, 352 US 270, 1 L Ed 2d 306, 77 S Ct 269 (1957), that statutes of limitations for suits against the Government were *not* subject to equitable tolling. It is unlikely that the 1972 Congress had in mind the Court's present departure from that longstanding rule.

founded, the doctrine of stare decisis demands that we attempt to reconcile our prior decisions rather than hastily overrule some of them.[3] Such an attempt would reveal that Bowen v City of New York, 476 US 467, 90 L Ed 2d 462, 106 S Ct 2022 (1986), cited by the Court for the alleged inconsistency, see ante, at 94, 112 L Ed 2d, at 443, is not irreconcilable with the cases discussed above. In Bowen, we allowed equitable tolling against the Government because, among other things, the statutory time period there, set forth in 42 USC § 405(g) [42 USCS § 405(g)], expressly allowed tolling. Section 405(g) requires that a civil action be filed "within sixty days . . . *or within such further time as the Secretary may allow.*" See 476 US, at 472, n 3, 90 L Ed 2d 462, 106 S Ct 2022 (emphasis added). We noted that the provision in that section allowing the Secretary of Health and Human Services to extend the filing deadline expressed Congress' "clear intention to allow tolling in some cases." Id., at 480, 90 L Ed 2d 462, 106 S Ct 2022. Moreover, we observed that the regulations promulgated by the Secretary governing extensions of time under that provision were based on equitable concerns of fairness to claimants, further "support[ing] our application of equitable tolling." Id., at 480, n 12, 90 L Ed 2d 462, 106 S Ct 2022. The statute in this case, unlike the one in Bowen, does not manifest any "clear intention" by Congress to allow tolling and thus should be subject to the rule articulated in Soriano, supra.

Accordingly, I concur in the judgment because I do not believe that equitable tolling is available as a defense to the 30-day filing requirement, and I would not reach the factual issue whether equitable tolling is supported by the circumstances of this case.

Justice **Stevens,** concurring in part and dissenting in part.

While I agree with the Court's conclusion that the filing deadline in 42 USC § 2000e-16(c) [42 USCS § 2000e-16(c)] is subject to equitable tolling and that the petitioner has failed to establish a basis for tolling in this case, I do not agree that the 30-day limitations period began to run when petitioner's lawyer, rather than petitioner himself, received notice from the EEOC of petitioner's right to file a civil action.

The Court is entirely correct that notice to a litigant's attorney is generally considered notice to the litigant *after* litigation has been commenced. See ante, at 92-93, 112 L Ed 2d, at 442. But the Court overlooks the fact that litigation is usually commenced by service of process on the adverse party himself. Indeed, the Federal Rules of Civil Procedure expressly require service on the opposing litigant. See Fed Rule Civ Proc 4(d). This case involves a notice that is a condition precedent to the commencement of formal litigation. I therefore believe that Congress intended that this notice, like a summons and complaint, be served on the adverse party, not his representative.

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[3] Stare decisis is "of fundamental importance to the rule of law," Welch v Texas Dept. of Highways and Public Transportation, 483 US 468, 494, 97 L Ed 2d 389, 107 S Ct 2941 (1987), because, among other things, it promotes stability and protects expectations. Vasquez v Hillery, 474 US 254, 265-266, 88 L Ed 2d 598, 106 S Ct 617 (1986). Although always an important guiding principle, it has "special force" in cases such as this one that involve statutory interpretation because Congress is in a position to overrule our decision if it so chooses. Patterson v McLean Credit Union, 491 US 164, 172-173, 105 L Ed 2d 132, 109 S Ct 2363 (1989).

The Court contends that reading "the term 'receipt' [in § 2000e-16(c)] to mean only 'actual receipt by the claimant' would render the practice of notification through counsel a meaningless exercise." Ante, at 93, 112 L Ed 2d, at 442. By the same logic, however, reading "receipt," as the Court does, to mean only "receipt by the claimant's representative" renders "a meaningless exercise" the EEOC's practice of notifying the claimant personally, a practice codified in EEOC regulations, see 29 CFR § 1613.234(a) (1990). Actually, notifying both the claimant and his representative makes sense regardless of which notice begins the ticking of the limitations clock. Dual notification ensures that all persons concerned with the progress of the action are apprised of important developments. Cf. ibid. (also requiring notification of employing agency). However, a claimant's representative before the

EEOC will not necessarily also represent the claimant in the ensuing civil suit; indeed, the representative in the administrative proceedings need not even be an attorney. See § 1613.214(b). Notice to the claimant is therefore the more logical trigger for the limitations countdown. This construction is not only sensible in light of the notice requirement's function in the statutory scheme, but is also consistent with our previous admonitions that Title VII, a remedial statute, should be construed in favor of those whom the legislation was designed to protect. See Zipes v Trans World Airlines, Inc. 455 US 385, 397-398, 71 L Ed 2d 234, 102 S Ct 1127 (1982); Love v Pullman Co. 404 US 522, 527, 30 L Ed 2d 679, 92 S Ct 616 (1972).

Accordingly, I respectfully dissent from the Court's judgment. I would instead reverse the judgment of the Court of Appeals and remand the case for resolution of the disputed factual issue of when the petitioner himself actually received notice from the EEOC of his right to file a civil action.

[498 US 103]

RAYMOND J. MOSKAL, SR., Petitioner

v

UNITED STATES

498 US 103, 112 L Ed 2d 449, 111 S Ct 461

[No. 89-964]

Argued October 1, 1990. Decided December 3, 1990.

Decision: Genuine motor vehicle titles, received by person who knew that such titles incorporated fraudulently tendered odometer readings, held to have been "falsely made" within meaning of 18 USCS § 2314.

SUMMARY

Among the matters prohibited by 18 USCS § 2314 is the knowing transportation in interstate commerce of "falsely made, forged, altered, or counterfeited securities." Another statute defines "securities," for purposes of § 2314, to include valid motor vehicle titles. During the period from December 1984 through July 1985, several individuals participated in a "title washing" scheme involving motor vehicle titles. Pursuant to such scheme, (1) used cars were purchased in Pennsylvania; (2) the cars' odometers were "rolled back" to indicate lower mileage figures; (3) the titles to the cars were altered to reflect such figures; (4) the altered titles were submitted to Virginia officials, who issued Virginia titles incorporating the false mileage figures; and (5) the "washed" titles were sent back to Pennsylvania, where they were used in connection with car sales to unsuspecting buyers. The scheme participant who received the "washed" titles when they were returned was indicted and convicted, in the United States District Court for the Middle District of Pennsylvania, for violating § 2314. On appeal, the United States Court of Appeals for the Third Circuit, affirming the conviction, ruled that the purpose of the term "falsely made" in § 2314 was to prohibit the fraudulent introduction into commerce of falsely made documents regardless of the precise method by which the documents' introducer, or the introducer's confederates, effected the documents' lack of authenticity (888 F2d 283).

On certiorari, the United States Supreme Court affirmed. In an opinion by Marshall, J., joined by Rehnquist, Ch. J., and White, Blackmun, and

Briefs of Counsel, p 1226, infra.

Stevens, JJ., it was held that (1) a person who knowingly procured genuine motor vehicle titles that incorporated fraudulently tendered odometer readings through a "title washing" scheme received such titles knowing them to be "falsely made" within the meaning of § 2314, in that both the plain meaning of the words "falsely made" and the legislative purpose underlying such words supported the application of § 2314 to such a scheme; (2) such titles were "falsely made," for purposes of § 2314, in the sense that they were made to contain false, or incorrect, information; (3) a construction of § 2314 that sought to exclude any security that was "genuine" or valid from the scope of the statute essentially equated the term "falsely made" with the terms "forged" or "counterfeited," and in so doing violated the established principle that a court should give effect if possible to every clause and word of a statute; and (4) Congress could not be presumed to have adopted a common-law definition of the term "falsely made" which would have given such term a meaning equivalent to forgery, thereby excluding authentic documents that were merely false in content, because (a) a plurality of definitions of the term "falsely made" existed at common law at the time that § 2314 was amended to include the term, and such plurality undermined reliance on the principle of statutory construction that a term which was not otherwise defined should generally be given its common-law meaning, and (b) such a presumption did not accord with Congress' broad purpose in enacting § 2314—to criminalize trafficking in fraudulent securities that exploited interstate commerce.

Scalia, J., joined by O'Connor and Kennedy, JJ., dissenting, expressed the view that (1) the phrase "falsely made, forged, altered, or counterfeited" in § 2314 was not a listing of differing and precisely calibrated terms, but was a collection of near synonyms which described the product of the general crime of forgery; (2) in such cases of iteration, the principle of statutory construction that, if possible, each word should be given some effect was inapplicable; (3) at the time that the phrase "falsely made, forged, altered, or counterfeited" was enacted as part of § 2314, (a) the phrase was the most common statutory definition of forgery, and (b) there was only minimal divergence by courts from the view that the genuine making of an instrument for the purpose of defrauding did not constitute the crime of forgery; and (4) thus, the term "falsely made" in § 2314 (a) had a plain, common-law meaning, and (b) could not be given a broader scope than such meaning based on "Congress' broad purpose" in amending § 2314 to include the term.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Fraud and Deceit § 4; Statutes §§ 102, 103, 166 — transportation of "falsely made" vehicle titles — reception of valid titles known to contain fraudulent information

1a-1d. A person who knowingly procures genuine motor vehicle titles that incorporate fraudulently tendered odometer readings—which incorporation is accomplished through a "title washing" scheme in which (1) used cars are purchased in one state, (2) the cars' odometers are "rolled back," to indicate lower mileage figures, (3) the titles to the cars are altered to reflect such figures, (4) the altered titles are submitted to another state's officials, who issue new titles incorporating the false mileage figures, and (5) the "washed" titles are sent back to the first state, where they are used in connection with car sales to unsuspecting buyers—receives those titles knowing them to be "falsely made" within the meaning of 18 USCS § 2314, which prohibits the knowing transportation in interstate commerce of "falsely made, forged, altered, or counterfeited" securities, including vehicle titles; both the plain meaning of the words "falsely made" and the legislative purpose underlying such words support the application of § 2314 to a fraudulent scheme for "washing" vehicle titles;

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66 Am Jur 2d, Receiving and Transporting Stolen Property §§ 40, 41

18 USCS § 2314

US L Ed Digest, Fraud and Deceit § 4

Index to Annotations, Automobiles and Highway Traffic; Certificates of Title; Fraud and Deceit; National Stolen Property Act; Odometers

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's construction and application of National Stolen Property Act (18 USCS § 2314). 87 L Ed 2d 768.

Supreme Court's views as to the "rule of lenity" in the construction of criminal statutes. 62 L Ed 2d 827.

What constitutes a "falsely made, forged, altered, or counterfeited" security within meaning of 18 USCS § 2314, making transportation of such securities a criminal offense. 4 ALR Fed 793.

such titles are "falsely made," for purposes of § 2314, in the sense that they are made to contain false, or incorrect, information. (Scalia, O'Connor, and Kennedy, JJ., dissented from this holding.)

Statutes § 187 — prohibition — congressional intent as controlling

2. The question whether a valid motor vehicle title that contains fraudulently tendered odometer readings may be a "falsely made" security, for purposes of 18 USCS § 2314—which prohibits the knowing transportation in interstate commerce of "falsely made" securities, including vehicle titles—presents a conventional issue of statutory construction, and the United States Supreme Court therefore must determine what scope Congress intended § 2314 to have.

Fraud and Deceit § 4; Statutes §§ 186, 188 — transportation of "falsely made" vehicle titles — rule of lenity — absence of ambiguity

3. The touchstone of the rule of lenity—which rule is used to construe a criminal statute in favor of lenity toward an accused in situations in which a reasonable doubt persists about the statute's intended scope even after resort to the statute's language, structure, legislative history, and motivating policies—is statutory ambiguity; such rule, therefore, is inapplicable in determining whether an accused violated 18 USCS § 2314—which prohibits the knowing transportation in interstate commerce of "falsely made" securities, including motor vehicle titles—through the reception of valid vehicle titles which the accused knew contained fraudulently tendered odometer readings, because § 2314 unambiguously applies to the accused's conduct in such circumstances. (Scalia, O'Connor, and Kennedy, JJ., dissented in part from this holding.)

Statutes §§ 164, 165 — construction — language — ordinary meaning

4. In determining the scope of a statute, the United States Supreme Court looks first to the statute's language, giving the words used in the statute their ordinary meaning.

Evidence § 253; Fraud and Deceit § 4; Statutes § 166 — transportation of "falsely made" securities — ordinary meaning of term — inference of scienter requirement

5. As used in 18 USCS § 2314—which prohibits the knowing transportation in interstate commerce of "falsely made, forged, altered, or counterfeited securities"—the term "falsely made" refers to the character of the securities being transported; it is perfectly consistent with ordinary usage to speak of a security as being "falsely made" regardless of whether the party responsible for the physical condition of the document knew that the party was making a security in a manner that incorporates false information; since liability under § 2314 depends on transporting a "falsely made" security with unlawful or fraudulent intent, there is no reason to infer a scienter requirement for the act of falsely making itself.

Fraud and Deceit § 4; Statutes § 110 — transportation of "falsely made" securities — exclusion of valid securities — giving effect to every part of statute

6. With respect to 18 USCS § 2314

—which statute prohibits the knowing transportation in interstate commerce of "falsely made, forged, altered, or counterfeited securities"—a construction that seeks to exclude any security that is "genuine" or valid from the scope of the statute essentially equates the term "falsely made" with the terms "forged" or "counterfeited," and in so doing violates the established principle that a court should give effect, if possible, to every clause and word of a statute. (Scalia, O'Connor, and Kennedy, JJ., dissented from this holding.)

Fraud and Deceit § 4; Statutes §§ 102, 103 — vehicle "title washing" as interstate transportation of "falsely made" securities — purpose

7a, 7b. "Title washing" operations, in which operations motor vehicle titles from one state are altered before being submitted to a second state, in order to obtain genuine titles which contain false information, are an example of the fraud which Congress—pursuant to its general intent to curb the type of trafficking in fraudulent securities that often depends for success on the exploitation of interstate commerce —sought to halt in enacting 18 USCS § 2314, which prohibits the knowing transportation in interstate commerce of "falsely made, forged, altered, or counterfeited" securities, including vehicle titles, insofar as such operations involve precisely the sort of fraudulent activities that are dispersed among several states in order to elude state detection.

Statutes § 184 — federal crimes — broad construction

8. Federal statutes that are intended to fill a void in local law enforcement should be construed broadly.

Statutes §§ 100.5, 125 — construction — common-law meaning — purpose

9a, 9b. Where a federal criminal statute uses a common-law term of established meaning without otherwise defining such term, the general practice is to give the term its common-law meaning; such rule of construction presumes that Congress accepted the one meaning for an undefined statutory term that prevailed at common law, but where no fixed usage for such term existed at common law, it is more appropriate to inquire which of the common-law readings of the term best accords with the overall purposes of the statute, rather than simply to assume that Congress adopted the reading that was followed by the largest number of common-law courts.

Evidence § 253; Fraud and Deceit § 4; Statutes §§ 102, 103, 125 — presumptions — transportation of "falsely made" securities — authentic documents having false content — common law — purpose

10a-10d. In amending 18 USCS § 2314 so as to prohibit the knowing transportation in interstate commerce of "falsely made" securities, including motor vehicle titles, Congress adopted a common-law view of the term "falsely made," which view encompasses authentic or genuine documents that are false in content; Congress cannot be presumed to have adopted instead a common-law definition of the term "falsely made" which would have given such term a meaning equivalent to forgery, thereby excluding authentic documents that were merely false in content—such as valid vehicle titles that merely contained false odometer readings—because (1) a plurality of definitions of the term "falsely made" existed at common law at the time that § 2314 was amended to include the term, and such plurality undermines reliance on the principle of statutory construction that a term which is not otherwise defined should generally be given its common-law meaning, and (2) such a presumption does not accord with Congress' broad purpose in enacting § 2314—to criminalize trafficking in fraudulent securities that exploits interstate commerce. (Scalia, O'Connor, and Kennedy, JJ., dissented in part from this holding.)

Statutes § 91 — construction — congressional intent

11. Sound rules of statutory interpretation exist to discover and not to direct the congressional will.

Fraud and Deceit § 4; Statutes §§ 82.3, 186 — transportation of "falsely made" securities — avoidance of inexpediency and oppression

12. A narrow construction of the term "falsely made" in 18 USCS § 2314—which statute prohibits the knowing transportation in interstate commerce of "falsely made" securities, including motor vehicle titles—so as not to apply to valid securities containing false information, is not warranted by the policy arguments that such construction (1) would result in the invalidation of thousands of vehicle titles every year, since there is no evidence to suggest that states automatically would deem securities containing fraudulently tendered information invalid simply because federal law punished those responsible for introducing such fraudulent securities into the stream of commerce, or (2) would criminalize a broad range of innocent conduct, since (a) a person who transports in interstate commerce securities containing false information violates § 2314 only if he does so with unlawful or fraudulent intent and if the false information is itself material, and (b) a person whose conduct satisfies these tests is no more innocent than a person who engages in a fraudulent scheme to obtain valid motor vehicle titles with fraudulently tendered odometer readings.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner participated in a "title-washing" scheme in which automobile titles that had been altered to reflect rolled-back odometer mileage figures were sent from Pennsylvania to Virginia. After Virginia authorities, unaware of the alterations, issued Virginia titles incorporating the false figures, Moskal received the "washed" titles in Pennsylvania, where they were used in connection with car sales to unsuspecting buyers. Moskal was convicted of receiving two washed titles under 18 USC § 2314 [18 USCS § 2314], which prohibits the knowing transportation of "*falsely made,* forged, altered, or counterfeited securities" in interstate commerce. (Emphasis added.) In affirming Moskal's conviction, the Court of Appeals rejected his contention that, because the washed titles were genuine, inasmuch as the Virginia officials who issued them did not know of the falsity, the titles therefore were not "falsely made."

Held: A person who receives genuine vehicle titles, knowing that they incorporate fraudulently tendered odometer readings, receives those titles knowing them to have been "falsely made" in violation of § 2314.

(a) Moskal misconstrues the doctrine of lenity when he contends that because it is *possible* to read § 2314 as applying only to forged or counterfeited securities, and because some courts have so read it, this Court should simply resolve the issue in his favor under that doctrine. The doctrine applies only to those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute. Such factors demonstrate that § 2314 unambiguously applies to Moskal's conduct.

(b) Both the plain meaning of the words "falsely made" and the legislative purpose underlying them provide ample support for applying § 2314 to a fraudulent scheme for washing vehicle titles. The quoted words are broad enough, on their face, to encompass washed titles containing fraudulently tendered odometer readings, since such titles are made to contain false, or incorrect, information. The fact that the state officials responsible for issuing such titles did not know that they were incorporating false readings is irrelevant, since § 2314 liability depends on *transporting* the "falsely made" security with unlawful or fraudulent intent and not on the scienter of the person who physically produces the security. Moskal's construction of § 2314 as excluding any security that is "genuine" or valid deprives the "falsely made" phrase of *any* meaning independent of the statutory terms "forged" and "counterfeited," and therefore violates the established principle that a court should give effect, if possible, to every clause or word of a statute. That "falsely made" encompasses genuine documents containing false information is also supported by § 2314's purpose of curbing the type of trafficking in fraudulent securities that depends for its success on the exploitation of interstate commerce to avoid detection by individual States, such as a title-washing operation. The fact that the legislative history contains references to counterfeit securities but not to odometer rollback schemes does not require a different conclusion, since, in choosing the broad phrase "falsely made, forged, altered, *or* counterfeited securities," Congress sought to reach a class of frauds that exploited interstate commerce. This Court has never required that every permissible application of a statute be expressly referred to in its legislative history. Moreover, the Court's § 2314 precedents specifically reject constructions that limit the statute to *instances* of fraud rather than the *class* of fraud encompassed by its language. See United States v Sheridan, 329 US 379, 390, 391, 91 L Ed 359, 67 S Ct 332; McElroy v United States, 455 US 642, 655, 656, 658, 71 L Ed 2d 522, 102 S Ct 1332.

(c) The foregoing reading of § 2314 is not precluded by the principle of statutory construction requiring that, where a federal criminal statute uses a common-law term of established meaning without otherwise defining it, the term must generally be given that meaning. Although, at the time Congress enacted the relevant clause of § 2314, many courts had interpreted "falsely made" to exclude documents that were false only in content, that interpretation was not universal, other courts having taken divergent views. Where no fixed usage existed at common law, it is more appropriate to inquire which of the common-law readings of the term best accords with the overall purpose of the statute, rather than simply to assume, for example, that Congress adopted the reading that was followed by the largest number of common-law courts. Moreover, Congress' general purpose in enacting a law may prevail over the "common-law meaning" rule of construction. Since the position of those common-law courts that define "falsely made" to exclude documents that are false only in content does not accord with Congress' broad purpose in enacting § 2314—namely to criminalize trafficking in fraudulent securities that exploits interstate commerce—it is far more likely that Congress adopted the common-law view of "falsely made" that encompasses "genuine" documents that are false in content.

(d) Moskal's policy arguments for narrowly construing "falsely made" are unpersuasive. First, there is no evidence to suggest that States will deem washed titles automatically invalid—thereby creating chaos in the stream of automobile commerce—simply because federal law punishes those responsible for introducing such fraudulent securities into commerce. Second, construing "falsely made" to apply to securities containing false information will not criminalize a broad range of "innocent" conduct. A person who transports such securities in interstate commerce violates § 2314 only if he does so with unlawful or fraudulent intent *and* if the false information is itself material, and conduct that satisfies these tests is not "innocent."

888 F2d 283, affirmed.

Marshall, J., delivered the opinion of the Court, in which Rehnquist, C. J., and White, Blackmun, and Stevens, JJ., joined. Scalia, J., filed a dissenting opinion, in which O'Connor and Kennedy, JJ., joined. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Dennis M. Hart argued the cause for petitioner.

Stephen L. Nightingale argued the cause for respondent.

Briefs of Counsel, p 1226, infra.

OPINION OF THE COURT

[498 US 105]

Justice **Marshall** delivered the opinion of the Court.

[1a] The issue in this case is whether a person who knowingly procures genuine vehicle titles that incorporate fraudulently tendered odometer readings receives those titles "knowing [them] to have been *falsely made.*" 18 USC § 2314 [18 USCS § 2314] (emphasis added). We conclude that he does.

I

Petitioner Raymond Moskal participated in a "title-washing" scheme. Moskal's confederates purchased used cars in Pennsylvania, rolled back the cars' odometers, and altered their titles to reflect those lower mileage figures. The altered titles were then sent to an accomplice in Virginia, who submitted them to Virginia authorities. Those officials,

[498 US 106]

unaware of the alterations, issued Virginia titles incorporating the false mileage figures. The "washed" titles were then sent back to Pennsylvania, where they were used in connection with car sales to unsuspecting buyers. Moskal played two roles in this scheme: He sent altered titles from Pennsylvania to Virginia; he received "washed" titles when they were returned.

The Government indicted and convicted Moskal under 18 USC § 2314 [18 USCS § 2314] for receiving two washed titles, each recording a mileage figure that was 30,000 miles lower than the true number. Section 2314 imposes fines or imprisonment on anyone who, "with unlawful or fraudulent intent, transports in interstate . . . commerce any falsely made, forged, altered, or counterfeited securities . . . , knowing the same to have been falsely made, forged, altered, or counterfeited." On appeal, Moskal maintained that the washed titles were nonetheless genuine and thus not "falsely made." The Court of Appeals disagreed, finding that " ' "the purpose of the term 'falsely made' was to . . . prohibit the fraudulent introduction into commerce of falsely made documents regardless of the precise method by which the introducer or his confederates effected their lack of authenticity." ' " United States v Davis, 888 F2d 283, 285 (CA3 1989), quoting United States v Mitchell, 588 F2d 481, 484 (CA5), cert denied, 442 US 940, 61 L Ed 2d 310, 99 S Ct 2881 (1979), quoting United States v Huntley, 535 F2d 1400, 1402 (CA5 1976), cert denied, 430 US 929, 51 L Ed 2d 773, 97 S Ct 1548 (1977).

Notwithstanding the narrowness of this issue, we granted certiorari to resolve a divergence of opinion among the Courts of Appeals. 494 US 1026, 108 L Ed 2d 607, 110 S Ct 1469 (1990). See United States v Sparrow, 635 F2d 794 (CA10 1980) (en banc), cert denied, 450 US 1004, 68 L Ed 2d 209, 101 S Ct 1717 (1981) (washed automobile titles are not "falsely made" within the meaning of § 2314). We now affirm petitioner's conviction.

II

As indicated, § 2314 prohibits the knowing transportation of "falsely made, forged, altered, or counterfeited securities"

in interstate commerce.[1] Moskal acknowledges that he could have been charged with violating this provision when he sent the Pennsylvania titles to Virginia, since those titles were "altered" within the meaning of § 2314. But he insists that he did not violate the provision in subsequently receiving the washed titles from Virginia because, although he was participating in a fraud (and thus no doubt had the requisite intent under § 2314), the washed titles themselves were not "falsely made." He asserts that when a title is issued by appropriate state authorities who do not know of its falsity, the title is "genuine" or valid as the state document it purports to be and therefore not "falsely made."

[2] Whether a valid title that contains fraudulently tendered odometer readings may be a "falsely made" security for purposes of § 2314 presents a conventional issue of statutory construction, and we must therefore determine what scope Congress intended § 2314 to have. Moskal, however, suggests a shortcut in that inquiry. Because it is *possible* to read the statute as applying only to forged or counterfeited securities, and because *some* courts have so read it, Moskal suggests we should simply resolve the issue in his favor under the doctrine of lenity. See, e.g., Rewis v United States, 401 US 808, 812, 28 L Ed 2d 493, 91 S Ct 1056 (1971).

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[1] The text of 18 USC § 2314 [18 USCS § 2314] reads, in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged altered, or counterfeited;

. . . .

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

For purposes of § 2314, "securities" are defined to include any "valid . . . motor vehicle title." § 2311.

[3] In our view, this argument misconstrues the doctrine. We have repeatedly "emphasized that the 'touchstone' of the rule of lenity 'is statutory ambiguity.'" Bifulco v United States, 447 US 381, 387, 65 L Ed 2d 205, 100 S Ct 2247 (1980), quoting Lewis v United

[498 US 108]

States, 445 US 55, 65, 63 L Ed 2d 198, 100 S Ct 915 (1980). Stated at this level of abstraction, of course, the rule

> "provides little more than atmospherics, since it leaves open the crucial question—almost invariably present—of *how much* ambiguousness constitutes . . . ambiguity." United States v Hansen, 249 US App DC 22, 30, 772 F2d 940, 948 (1985) (Scalia, J.) (emphasis added), cert denied, 475 US 1045, 89 L Ed 2d 571, 106 S Ct 1262 (1986).

Because the meaning of language is inherently contextual, we have declined to deem a statute "ambiguous" for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the Government. See, e.g., McElroy v United States, 455 US 642, 657-658, 71 L Ed 2d 522, 102 S Ct 1332 (1982). Nor have we deemed a division of judicial authority automatically sufficient to trigger lenity. See, e.g., United States v Rodgers, 466 US 475, 484, 80 L Ed 2d 492, 104 S Ct 1942 (1984). If that were sufficient, one court's unduly narrow reading of a criminal statute would become binding on all other courts, including this one. Instead, we have always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to "the language and structure, legislative history, and motivating policies" of the statute. Bifulco v United States, supra, at 387, 65 L Ed 2d 205, 100 S Ct 2247; see also United States v Bass, 404 US 336, 347, 30 L Ed 2d 488, 92 S Ct 515 (1971) (court should rely on lenity only if, "[a]fter 'seiz[ing] every thing from which aid can be derived,'" it is "left with an ambiguous statute," quoting United States v Fisher, 2 Cranch 358, 386, 2 L Ed 304 (1805) (Marshall, C.J.)). Examining these materials, we conclude that § 2314 unambiguously applies to Moskal's conduct.

A

[1b, 4] "In determining the scope of a statute, we look first to its language," United States v Turkette, 452 US 576, 580, 69 L Ed 2d 246, 101 S Ct 2524 (1981), giving the "words used" their "ordinary meaning," Richards v United States, 369 US 1, 9, 7 L Ed 2d 492, 82 S Ct 585 (1962). We think

[498 US 109]

that the words of § 2314 are broad enough, on their face, to encompass washed titles containing fraudulently tendered odometer readings. Such titles are "falsely made" in the sense that they are made to contain false, or incorrect, information.

[5] Moskal resists this construction of the language on the ground that the state officials responsible for issuing the washed titles did not know that they were incorporating false odometer readings. We see little merit in this argument. As used in § 2314, "falsely made" refers to the character of the securities being transported. In our view, it is perfectly consistent with ordinary usage to speak of the security as *being* "falsely made" regardless of whether the party responsible for the physical production of the document *knew* that he was making a security in a manner that incorporates false information. Indeed, we find support for this construction in the nexus between the actus reus and mens rea elements of § 2314. Because liability under the statute depends on *transporting* the "falsely made" security with unlawful or fraudulent intent, there is no reason to infer a scienter requirement for the act of falsely making itself.[2]

[6] Short of construing "falsely made" in this way, we are at a loss to give *any* meaning to this phrase independent of the other terms in § 2314, such as "forged" or "counterfeited." By seeking to exclude from § 2314's scope any security that is "genuine" or valid, Moskal essentially equates "falsely made" with "forged" or "counterfeited."[3] His construction therefore violates the established principle that a court should " 'give effect, if possible, to every clause and word of a statute.' "

[498 US 110]

United States v Menasche, 348 US 528, 538-539, 99 L Ed 615, 75 S Ct 513 (1955), quoting Montclair v Ramsdell, 107 US 147, 152, 27 L Ed 431, 2 S Ct 391 (1883); see also Pennsylvania Dept. of Public Welfare v Davenport, 495 US 552, 562, 109 L Ed 2d 588, 110 S Ct 2126 (1990).

[1c, 7a] Our conclusion that "falsely made" encompasses genuine documents containing false information is supported by Congress' purpose in enacting § 2314. Inspired by the proliferation of interstate schemes for passing counterfeit securities, see 84 Cong Rec 9412 (statement of Sen. O'Mahoney), Congress in 1939 added the clause pertaining to "falsely made, forged, altered or counterfeited securities" as an amendment to the National Stolen Property Act. 53 Stat 1178. Our prior decisions have recognized Congress' "general intent" and "broad purpose" to curb the type of trafficking in fraudulent securities that often depends for its success on the exploitation of interstate commerce. In United States v Sheridan, 329 US 379, 91 L Ed 359, 67 S Ct 332 (1946), we explained that Congress enacted the relevant clause of § 2314[4] in order to "com[e] to the aid of the states in detecting and punishing criminals whose offenses are complete under state law, but who utilize the channels of interstate commerce to make a successful getaway and thus make the state's detecting and punitive processes impotent." Id., at 384, 91 L Ed 359, 67 S Ct 332. This, we concluded, "was indeed one of the most effective ways of preventing further frauds." Ibid.; see also McElroy v United States, 455 US 642, 655, 71 L Ed 2d 522, 102 S Ct 1332 (1982) (rejecting a narrow reading of § 2314 that was at odds with Congress' "broad purpose" and that would "undercut sharply . . . federal prosecutors in their effort to combat crime in interstate commerce").

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[2] Indeed, we offer no view on how we would construe "falsely made" in a statute that punished the act of false making and that specified no scienter requirement. Cf. Morissette v United States, 342 US 246, 251-252, 96 L Ed 288, 72 S Ct 240 (1952) (implying scienter for statutory version of "common-law" offense).

[3] Moskal justifies doing so by arguing that "falsely made" was synonymous with "forged" at common law. We separately consider—and reject—Moskal's common-law argument, infra, at 114-118, 112 L Ed 2d, at 462-464.

[4] The statute at issue in Sheridan was an earlier codification of § 2314. The clause governing "falsely made, forged, altered, or counterfeited securities" was at that time contained within 18 USC § 415 (1946 ed) [18 USCS § 415].

[7b] We think that "title-washing" operations are a perfect example of the "further frauds" that Congress sought to halt in enacting § 2314. As Moskal concedes, his title-washing scheme is a clear instance of fraud involving securities. And

as the facts of this case demonstrate, title washes involve precisely the sort of fraudulent activities that are dispersed among several States in order to elude state detection.

Moskal draws a different conclusion from this legislative history. Seizing upon the references to counterfeit securities, petitioner finds no evidence that "the 1939 amendment had anything at all to do with odometer rollback schemes." Reply Brief for Petitioner 6. We think petitioner misconceives the inquiry into legislative purpose by failing to recognize that Congress sought to attack a category of fraud. At the time that Congress amended the National Stolen Property Act, counterfeited securities no doubt constituted (and may still constitute) the most prevalent form of such interstate fraud. The fact remains, however, that Congress did not limit the statute's reach to "counterfeit securities" but instead chose the broader phrase "falsely made, forged, altered, *or* counterfeited securities," which was consistent with its purpose to reach a class of frauds that exploited interstate commerce.

This Court has never required that every permissible application of a statute be expressly referred to in its legislative history. Thus, for example, in United States v Turkette, 452 US 576, 69 L Ed 2d 246, 101 S Ct 2524 (1981), we recognized that "the major purpose" of the Racketeer Influenced and Corrupt Organizations statute was "to address the infiltration of legitimate business by organized crime." Id., at 591, 69 L Ed 2d 246, 101 S Ct 2524. Yet, we concluded from the statute's broad language and legislative purpose that the key term "enterprise" must include not only legitimate businesses but also criminal associations. Ibid.; see also United States v Naftalin, 441 US 768, 775, 60 L Ed 2d 624, 99 S Ct 2077 (1979) (Securities Act of 1933 covers fraud against brokers as well as investors, since "neither this Court nor Congress has ever suggested that investor protection was the *sole* purpose of [that] Act" (emphasis in original)).

Our precedents concerning § 2314 specifically reject constructions of the statute that limit it to *instances* of fraud

rather than the *class* of fraud encompassed by its language. For example, in United States v Sheridan, supra, the defendant cashed checks at a Michigan bank, drawn on a Missouri account, with a forged signature. The Court found that such conduct was proscribed by § 2314. In reaching that conclusion, the Court noted Congress' primary objective of reaching counterfeiters of corporate securities but nonetheless found that the statute covered check forgeries "done by 'little fellows' who perhaps were not the primary aim of the congressional fire." 329 US, at 390, 91 L Ed 359, 67 S Ct 332. "Whether or not Congress had in mind primarily such small scale transactions as Sheridan's," we held, "his operation was covered literally and we think purposively. Had this not been intended, appropriate exception could easily have been made." Ibid. In explaining that conclusion, we stated further:

> "Drawing the [forged] check upon an out-of-state bank, knowing it must be sent there for presentation, is an obviously facile way to delay and often to defeat apprehension, conviction and restoration of the ill-gotten gain. There are sound reasons therefore why Congress would wish not to exclude such persons [from the statute's reach], among them the very ease with which they may escape the state's grasp." Id., at 391, 91 L Ed 359, 67 S Ct 332.

In McElroy v United States, supra, we similarly rejected a narrow construction of § 2314. The defendant used blank checks that had been stolen in Ohio to buy a car and a boat in Pennsylvania. Defendant conceded that the checks he had thus misused constituted "forged securities" but maintained his innocence under the federal statute because the checks were not yet forged when they were transported across state boundaries. The Court acknowledged that "Congress could have written the statute to produce this result," id., at 656, 71 L Ed 2d 522, 102 S Ct 1332, but rejected such a reading as inconsistent with Congress' "broad purpose" since it would permit "a patient forger easily [to] evade the reach of federal law," id., at 655, 71 L Ed 2d 522, 102 S Ct 1332. Moreover, because we found the defendant's interpretation to be contradicted

by Congress' intent in § 2314 and its predecessors, we also rejected the defendant's plea for lenity: "[A]lthough 'criminal statutes are to be construed strictly . . . this does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature.'" Id., at 658, 71 L Ed 2d 522, 102 S Ct 1332, quoting United States v Bramblett, 348 US 503, 509-510, 99 L Ed 594, 75 S Ct 504 (1955) (footnote omitted). We concluded that the defendant had failed to "raise significant questions of ambiguity, for the statutory language and legislative history . . . indicate that Congress defined the term 'interstate commerce' more broadly than the petitioner contends." 455 US, at 658, 71 L Ed 2d 522, 102 S Ct 1332.

[8] Thus, in both Sheridan and McElroy, defendants who admittedly circulated fraudulent securities among several States sought to avoid liability by offering a reading of § 2314 that was narrower than the scope of its language and of Congress' intent, and in each instance we rejected the proffered interpretation. Moskal's interpretation in the present case rests on a similarly cramped reading of the statute's words, and we think it should likewise be rejected as inconsistent with Congress' general purpose to combat interstate fraud. "[F]ederal criminal statutes that are intended to fill a void in local law enforcement should be construed broadly." Bell v United States, 462 US 356, 362, 76 L Ed 2d

638, 103 S Ct 2398 (1983) (Stevens, J., dissenting) (citation omitted).[5]

[1d] To summarize our conclusions as to the meaning of "falsely made" in § 2314, we find both in the plain meaning of those words and in the legislative purpose underlying them ample reason to apply the law to a fraudulent scheme for washing vehicle titles.[6]

B

[9a, 10a] Petitioner contends that such a reading of § 2314 is nonetheless precluded by a further principle of statutory construction. "[W]here a federal criminal statute uses a common-law term of established meaning without otherwise defining it, the general practice is to give that term its common-law meaning." United States v Turley, 352 US 407, 411, 1 L Ed 2d 430, 77 S Ct 397, 56 ALR2d 1300 (1957). Petitioner argues that, at the time Congress enacted the relevant clause of § 2314, the term "falsely made" had an established common-law meaning equivalent to forgery. As so defined, "falsely made" excluded authentic or genuine documents that were merely false in content. Petitioner maintains that Congress should be presumed to have adopted this common-law definition when it amended the National Stolen Property Act in 1939 and that § 2314 therefore should be deemed not to cover washed vehicle titles that merely contain false odometer readings. We disagree for two reasons.

[10b] First, Moskal has failed to demonstrate that there was, in fact, an "established" meaning of "falsely made" at common law. Rather, it appears that there were divergent views on this issue in American courts. Petitioner and respondent agree that many courts interpreted "falsely made" to exclude documents that were false only in content. The opinion in United States v Wentworth, 11 F 52 (CC NH 1882), typifies that view. There, the defendants were prosecuted for having "falsely made" affidavits that they submitted to obtain a pension. The defendants did sign the affidavits, but the facts recited therein were false. The court concluded that this would support a charge of perjury but not false making because "to falsely make an affidavit is one thing; to make a false affidavit is another." Id., at 55.[7]

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[5] Moskal appears to concede the logic, if not the result, of this analysis when he distinguishes—solely on its *facts*—the decision in United States v Daly, 716 F2d 1499 (CA9 1983), cert dism'd, 465 US 1075, 79 L Ed 2d 773, 104 S Ct 1456 (1984). The defendants in Daly operated a car theft ring and were convicted under § 2314 of transporting washed vehicle titles that falsely identified the numbers and owners of the stolen cars. Notwithstanding the extremely similar facts in Daly, petitioner does not ask us to disapprove the result in that case. Rather, he seeks to distinguish his own case on the grounds that, "[u]nlike the situation in Daly, here the [car] ownership information was *never* altered." Brief for Petitioner 12 (emphasis in original). We cannot fathom why the particular information that is falsified in a washed vehicle title —assuming that it is material—would be relevant to Congress' intent to criminalize the use of such fraudulent documents, particularly when both schemes serve the same goal of deceiving prospective car buyers. On the contrary, we find confirmation in the Daly court's analysis that Congress intended to reach precisely the sort of fraudulent behavior in which petitioner engaged.

[6] Because of this conclusion, we have no trouble rejecting Moskal's suggestion that he did not have fair notice that his conduct could be prosecuted under § 2314. Moskal's contention that he was "entitled to rely" on one Court of Appeals decision holding that washed titles were not "falsely made" is wholly unpersuasive. See United States v Rodgers, 466 US 475, 484, 80 L Ed 2d 492, 104 S Ct 1942 (1984) (existence of conflicting decisions among courts of appeals does not support application of the doctrine of lenity where "review of th[e] issue by this Court and decision against the position of the [defendant are] reasonably foreseeable").

But the Wentworth view—that "falsely made" excluded documents "genuinely" issued by the person purporting to make them and false only in content—was not universal. For example, in United States v Hartman, 65 F 490 (ED Mo 1894), the defendant procured a "notary certificate" containing falsehoods. Finding that this conduct fell within the conduct proscribed by a statute barring certain falsely made, forged, altered, or counterfeited writings, the judge stated:

> "I cannot conceive how any significance can be given to the words 'falsely make' unless they shall be construed to mean the statements in a certificate which in fact are untrue. 'Falsely' means in opposition to the truth. 'Falsely makes' means to state in a certificate that which is not true . . . ." Id., at 491.

Other common-law courts, accepting the equation of "falsely making" with "forgery," treated as "forged" otherwise genuine documents fraudulently procured from innocent makers. In State v Shurtliff, 18 Me 368 (1841), a landowner signed a deed conveying his farm under the misapprehension that the deed pertained to a different land parcel. Although this deed was "genuine" in the sense that the owner had signed it, the court held it was "falsely made" by the *grantee,* who had tendered this deed for the owner's signature instead of one previously agreed upon by the parties. Id., at 371. In concluding that the deed was falsely made, the court explained: "It is not necessary, that the act [of falsely making] should be done, in whole or in part, by the hand of the party charged. It is sufficient if he cause or procure it to be done." Ibid. Similarly, In re Count de Toulouse Lautrec, 102 F 878 (CA7 1900), upheld the extradition on forgery charges of a defendant who misused sample copies of corporate bond interest coupons that were printed in good faith by the company's printers. The court noted:

> "[T]he authorities establish numerous instances wherein forgery is found, apart from the manual making or signing, as in the *fraudulent procurement* and use of a signature or writing as an obligation *when it is not so intended or understood by the maker."* Id., at 881 (emphasis added).

See also Annot, Genuine Making of Instrument for Purpose of Defrauding as Constituting Forgery, 41 ALR 229, 247 (1926).

[9b, 10c, 11] This plurality of definitions of "falsely made" substantially undermines Moskal's reliance on the "common-law meaning" principle. That rule of construction, after all, presumes simply that Congress accepted the *one* meaning for an undefined statutory term that prevailed at common law. Where, however, no fixed usage existed at common law, we think it more appropriate to inquire which of the common-law readings of the term best accords with the overall purposes of the statute

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[7] The Court of Appeals for the Tenth Circuit appeared to rely on this reasoning when it ruled that washed vehicle titles are not "falsely made" documents within the meaning of § 2314. United States v Sparrow, 635 F2d 794, 796 (1980) (en banc), cert denied, 450 US 1004, 68 L Ed 2d 209, 101 S Ct 1717 (1981). In that case, the court concluded that "falsely made" relates "to 'genuineness of execution and not falsity of content.'" 635 F2d, at 796, quoting Marteney v United States, 216 F2d 760, 763 (CA10 1954). As noted, supra, at 106, 112 L Ed 2d, at 457, it was because of the direct conflict between Sparrow and the Third Circuit's decision in the present case that we granted certiorari.

rather than to simply assume, for example, that Congress adopted the reading that was followed by the largest number of common-law courts. " 'Sound rules of statutory interpretation exist to discover and not to direct the Congressional will.' " Huddleston v United States, 415 US 814, 831, 39 L Ed 2d 782, 94 S Ct 1262 (1974), quoting United States ex rel. Marcus v Hess, 317 US 537, 542, 87 L Ed 443, 63 S Ct 379 (1943). See also United States v Turley, 352 US 407, 412, 1 L Ed 2d 430, 77 S Ct 397, 56 ALR2d 1300 (1957) (declining to assume that Congress equated "stolen" with the common-law meaning of "larceny" in light of varying historic usages of the terms "steal" or "stolen").

Our second reason for rejecting Moskal's reliance on the "common-law meaning" rule is that, as this Court has previously recognized, Congress' general purpose in enacting a law may prevail over this rule of statutory construction. In Taylor v United States, 495 US 575, 109 L Ed 2d 607, 110 S Ct 2143 (1990), we confronted the question whether "burglary," when used in a sentence enhancement statute, was intended to take its common-law meaning. We declined to apply the "common-law meaning" rule, in part, because the common-law meaning of burglary was inconsistent with congressional purpose. "The arcane distinctions embedded in the common-law definition [of burglary]," we noted, "have little relevance to modern law-enforcement concerns." Id., at 593, 109 L Ed 2d 607, 110 S Ct 2143 (footnote omitted). See also Bell v United States, 462 US 356, 360-361, 76 L Ed 2d 638, 103 S Ct 2398 (1983) (declining to apply the common-law meaning of "takes and carries away" as inconsistent with other provisions of the Bank Robbery Act).

[10d] We reach a similar conclusion here. The position of those common-law courts that defined "falsely made" to exclude documents that are false only in content does not accord with Congress' broad purpose in enacting § 2314—namely, to criminalize trafficking in fraudulent securities that exploits interstate commerce. We conclude, then, that it is far more likely that Congress adopted the common-law view of "falsely

made" that encompasses "genuine" documents that are false in content.

C

[12] Finally, Moskal offers two policy arguments for narrowly construing "falsely made." First, noting that thousands of automobile titles are "washed" every year, petitioner argues that "to *invalidate* all of these automobile titles because they contain an incorrect mileage figure may well result in havoc in the stream of automobile commerce." Brief for Petitioner 19 (emphasis added). Even if we were inclined to credit this concern as a reason for narrowing the statute, the argument—so far as we can discern—rests on a faulty premise. There is no evidence in the record to suggest that States will deem washed titles automatically invalid simply because federal law punishes those responsible for introducing such fraudulent securities into the streams of commerce.

Secondly, Moskal suggests that construing "falsely made" to apply to securities that contain false information will criminalize a broad range of "innocent" conduct. This contention, too, is unfounded. A person who transports such a security in interstate commerce violates § 2314 only if he does so with unlawful or fraudulent intent *and* if the false information is itself material.[8] A person whose conduct satisfies these tests will be acting no more "innocently" than was Moskal when he engaged in the concededly fraudulent title-washing scheme at issue in this case.

For all of the foregoing reasons, the decision of the Court of Appeals is affirmed.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

[498 US 119]

Justice **Scalia,** with whom Justice **O'Connor** and Justice **Kennedy** join, dissenting.

Today's opinion succeeds in its stated objective of "resolv[ing] a divergence of opinion among the Courts of Appeals," ante, at 106, 112 L Ed 2d, at 457, regarding the application of 18 USC § 2314 [18 USCS § 2314]. It does that, however, in a manner that so undermines generally applicable principles of statutory construction that I fear the confusion it produces will far exceed the confusion it has removed.

I

The Court's decision rests ultimately upon the proposition that, pursuant to "ordinary meaning," a "falsely made" document includes a document which is genuinely what it purports to be, but which contains information that the maker knows to be false, or even information that the maker does not know to be false but that someone who causes him to insert it knows to be false. It seems to me that such a meaning is quite *extra*-ordinary. Surely the adverb preceding the word "made" naturally refers to the manner of making, rather than to the nature of the product made. An inexpensively made painting is not the same as an inexpensive painting. A forged memorandum is "falsely made"; a memorandum that contains erroneous information is simply "false."

One would not expect general-usage dictionaries to have a separate entry for "falsely made," but some of them do use precisely the phrase "to make falsely" to define "forged." See, e.g., Webster's New International Dictionary 990 (2d ed 1945); Webster's Third New International Dictionary 891 (1961). The Court seeks to make its interpretation plausible by the following locution: "Such titles are 'falsely made' in the sense that they are made to contain false, or incorrect, information." Ante, at 109, 112 L Ed 2d, at 458.

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[8] The Court of Appeals found that the false mileage figures on the washed vehicle titles were material falsehoods. 888 F2d 283, 285 (CA3 1989). At oral argument, petitioner sought to challenge that finding. Although this issue was not presented in the petition for certiorari to this Court, we do not doubt the correctness of the lower court's conclusion as to this matter.

This sort of wordplay can transform virtually anything into "falsely made." Thus: "The building was falsely made in the sense that it was made to

contain a false entrance." This is a far cry from "ordinary meaning."

That "falsely made" refers to the manner of making is also evident from the fifth clause of § 2314, which forbids the interstate transportation of "any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps." This obviously refers to the tools of counterfeiting, and not to the tools of misrepresentation.

The Court maintains, however, that giving "falsely made" what I consider to be its ordinary meaning would render the term superfluous, offending the principle of construction that if possible each word should be given some effect. United States v Menasche, 348 US 528, 538-539, 99 L Ed 615, 75 S Ct 513 (1955). The principle is sound, but its limitation ("if possible") must be observed. It should not be used to distort ordinary meaning. Nor should it be applied to the obvious instances of iteration to which lawyers, alas, are particularly addicted—such as "give, grant, bargain, sell, and convey," "aver and affirm," "rest, residue, and remainder," or "right, title, and interest." See generally B. Garner, A Dictionary of Modern Legal Usage 197-200 (1987). The phrase at issue here, "falsely made, forged, altered, or counterfeited," is, in one respect at least, uncontestedly of that sort. As the United States conceded at oral argument, and as any dictionary will confirm, "forged" and "counterfeited" mean the same thing. See, e.g., Webster's 2d, supra, at 607 (defining to "counterfeit" as to "forge," and listing "forged" as a synonym of the adjective "counterfeit"), id., at 990 (defining to "forge" as to "counterfeit," and listing "counterfeit" as a synonym of "forge"). Since iteration is obviously afoot in the relevant passage, there is no justification for extruding an unnatural meaning out of "falsely made" simply in order to avoid iteration. The entire phrase "falsely made, forged, altered, or counterfeited" is self-evidently not a listing of differing and precisely

calibrated terms, but a collection of near synonyms which describes the product of the general crime of forgery.

II

Even on the basis of a layman's understanding, therefore, I think today's opinion in error. But in declaring that understanding to be the governing criterion, rather than the specialized legal meaning that the term "falsely made" has long possessed, the Court makes a mistake of greater consequence. The rigid and unrealistic standard it prescribes for establishing a specialized legal meaning, and the justification it announces for ignoring such a meaning, will adversely affect many future cases.

The Court acknowledges, as it must, the doctrine that when a statute employs a term with a specialized legal meaning relevant to the matter at hand, that meaning governs. As Justice Jackson explained for the Court in Morissette v United States, 342 US 246, 263, 96 L Ed 288, 72 S Ct 240 (1952):

> "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of

> centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such a case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as departure from them."

Or as Justice Frankfurter more poetically put it: "[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings its soil with it." Some Reflections on the Reading of Statutes, 47 Colum L Rev 527, 537 (1947).

We have such an obvious transplant before us here. Both Black's Law Dictionary and Ballentine's Law Dictionary contain a definition of the term "false making." The former reads as follows:

[498 US 122]

> "*False making.* An essential element of forgery, where material alteration is not involved. Term has reference to manner in which writing is made or executed rather than to its substance or effect. A falsely made instrument is one that is fictitious, not genuine, or in some material particular something other than it purports to be and without regard to truth or falsity of facts stated therein." Black's Law Dictionary 602 (6th ed 1990).

Ballentine's is to the same effect. See Ballentine's Law Dictionary 486 (2d ed 1948). "Falsely made" is, in other words, a term laden with meaning in the common law, because it describes an essential element of the crime of forgery. Blackstone defined forgery as "the *fraudulent making* or alteration of a writing to the prejudice of another man's right." 4 W. Blackstone, Commentaries 245 (1769) (emphasis added). The most prominent 19th-century American authority on criminal law wrote that "[f]orgery, at the common law, is the *false making* or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability." 2 J. Bishop, Criminal Law § 523, p 288 (5th ed 1872) (emphasis added). The distinction between "falsity in execution" (or "false making") and "falsity of content" was well understood on both sides of the Atlantic as marking the boundary between forgery and fraud.

> "The definition of forgery is not, as has been suggested in argument, that every instrument containing false statements fraudulently made is a forgery; but . . . that every instrument which fraudulently purports to be that which it is not is a forgery . . . ." Queen v Ritson, LR 1 Cr Cas Res 200, 203 (1869).

> "The term *falsely,* as applied to making or altering a writing in order to make it forgery, has reference not to the contracts or tenor of the writing, or to the fact stated in the writing . . . but it implies that the paper or writing
>
> [498 US 123]
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> is false, not genuine, fictitious, not a true writing, without regard to the truth or falsity of the statement it contains." State v Young, 46 NH 266, 270 (1865) (emphasis in original).

In 1939, when the relevant portion of § 2314 was enacted, the States and the Federal Government had been using the "falsely made" terminology for more than a century in their forgery statutes. E.g., Ky Penal Laws § 22 (1802) ("falsely make, forge or counterfeit"); Ind Rev Stat, ch 53, § 26 (1843) ("falsely make, deface, destroy, alter, forge, or counterfeit"); Del Rev Code, ch 151 (passed 1852) ("falsely make, forge, or counterfeit"). More significantly still, the most common statutory definition of forgery had been a formulation employing precisely the four terms that appear in § 2314: falsely make, alter, forge, and counterfeit. See, e. g., 1 Stat 115, § 14 ("falsely make, alter, forge or counterfeit") (1790); Act of Feb. 8, 1791, NH Const and Laws, pp 268-269 (1805) ("falsely make, alter, forge or counterfeit"); Md Acts of 1799, ch 75 (passed Jan. 3, 1800) ("falsely make, alter, forge or counterfeit"); Act of March 15, 1805, § 1, 4 Perpetual Laws of the Commonwealth of Mass 277 (1807) ("falsely make, alter, forge or counterfeit"); Ill Crim Code, div 8, § 73 (1827) ("falsely make, alter, forge or counterfeit"); Act of March 8, 1831, § 22, 3 Ohio Stat, p 1726 (1835) ("falsely make, alter, forge, or counterfeit"); Mo Rev Stat, Crimes and Punishments, Art IV, §§ 15-16 (1835) ("falsely make, alter, forge or counterfeit"); Me Rev Stat, ch 157 § 1 et seq. (1840) ("falsely make, alter, forge or counterfeit"); Iowa Code, ch 141 § 2926 (1851) ("falsely make, alter, forge, or counterfeit"); Act of Nov. 25, 1861, Nev Laws, ch 28, § 77 (1862) ("falsely make, alter, forge, or counterfeit"); Fla Rev Stat, Tit 2, Art 7, § 2479 (passed 1868) ("falsely makes, alters, forges or counterfeits"); Cal Penal Code, ch 4, § 470 (passed 1872) ("falsely makes, alters, forges, or counterfeits"); Minn Gen Stat, ch 96, § 1 (1879) ("falsely make, alter, forge or counterfeit"); Wyo Rev Stat,

div 5, Tit 1, § 5128 (1899) ("falsely make, alter, forge or counterfeit"); Act of March 3, 1899, Alaska Crim Code, Tit 1, § 76 ("falsely make, alter, forge, counterfeit, print, or photograph"); Idaho Penal Code, ch 221, § 4937 (1901) ("falsely makes, alters, forges or counterfeits"); Colo Rev Stat, ch 35, § 1704 (1908) ("falsely make, alter, forge or counterfeit"); RI Gen Laws, ch 609, § 1 (1938) ("falsely make, alter, forge or counterfeit"); Neb Comp Stat § 28-601 (1929) ("falsely makes, alters, forges, counterfeits, prints or photographs"). By 1939, several federal courts and eight States had held that the formula "falsely make, alter, forge or counterfeit" did not encompass the inclusion of false information in a genuine document. United States v Davis, 231 US 183, 187-188, 58 L Ed 177, 34 S Ct 112 (1913) (dictum); United States v Staats, 8 How 41, 46, 12 L Ed 979 (1850) (dictum); United States ex rel. Starr v Mulligan, 59 F2d 200 (CA2 1932); United States v Smith, 262 F 191 (Ind 1920); United States v Glasener, 81 F 566 (SD Cal 1897); United States v Moore, 60 F 738 (NDNY 1894); United States v Cameron, 3 Dak 132, 13 NW 561 (1882); United States v Wentworth, 11 F 52 (CCNH 1882); People v Kramer, 352 Ill 304, 185 NE 590 (1933); Goucher v State, 113 Neb 352, 204 NW 967 (1925); De Rose v People, 64 Colo 332, 171 P 359 (1918); State v Ford, 89 Ore 121, 172 P 802 (1918); Territory v Gutierrez, 13 NM 312, 84 P 525 (1906); People v Bendit, 111 Cal 274, 43 P 901 (1896); State v Corfield, 46 Kan 207, 26 P 498 (1890); State v Willson, 28 Minn 52, 9 NW 28 (1881). Only one federal court had disagreed. United States v Hartman, 65 F 490 (ED Mo 1894). (As noted in Part IV, infra, this case was not followed and has been implicitly overruled.) Even statutes that used "falsely made" without accompaniment of the other three terms used in § 2314 were interpreted not to include falsity of content. People v Mann, 75 NY 484 (1878); State v Young, 46 NH 266 (1865). Indeed, as far as I am aware, the only state courts that held a genuine document containing false information to be "forged" did so under

governing texts that did not include the term "falsely made." See Moore v Commonwealth, 92 Ky 630, 18 SW 833 (1892); Luttrell v State, 85 Tenn 232, 1 SW 886 (1886). Even they were in the minority, however. See Bank of Detroit v Standard Accident Insurance Co. 245 Mich 14, 222 NW 134 (1928) ("forged"); Dexter Holton National Bank of Seattle v United States Fidelity & Guaranty Co. 149 Wash 343, 270 P 799 (1928) ("forged"); Barron v State, 12 Ga App 342, 77 SE 214 (1913) ("fraudulently make").

Commentators in 1939 were apparently unanimous in their understanding that "false making" was an element of the crime of forgery, and that the term did not embrace false contents. May's Law of Crimes § 292 (K. Sears & H. Weihofen eds, 4th ed 1938); W. Clark & W. Marshall, Law of Crimes § 394 (3d ed 1927); 2 J. Bishop, Criminal Law §§ 523, 582, 582a (9th ed 1923); 1 H. Brill, Cyclopedia of Criminal Law § 557 (1922). (Contemporary commentators remain unanimous that falsity of content does not establish forgery. See, e.g., R. Perkins & R. Boyce, Criminal Law 418-420 (3d ed 1982); 4 C. Torcia, Wharton's Criminal Law 130-132 (14th ed 1981); W. Lafave & A. Scott, Criminal Law 671 (1972).) An American Jurisprudence annotation published in 1939 said:

> "A definition now very generally accepted explains forgery as the false making or material alteration, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability." 23 Am Jur, Forgery § 2, p 676.

It also said:

> "[T]he term 'falsely,' as applied to making or altering a writing in order to make it a forgery, does not refer to the contents or tenor of the writing or to the facts stated therein, but implies that the paper or writing is not genuine, that in itself it is false or counterfeit." Id., § 7, at 678.

I think it plain that "falsely made" had a well-established common-law meaning at the time the relevant language of § 2314 was enacted—indeed, that the entire formulary phrase "falsely made, forged, altered, or counterfeited" had a well-established common-law meaning; and that that meaning does not support the present conviction.

III

Unsurprisingly, in light of the foregoing discussion, the lower federal courts that interpreted this language of § 2314 for more than two decades after its passage uniformly rejected the Government's position that a genuine document could be "falsely made" because it contained false information. Melvin v United States, 316 F2d 647, 648 (CA7 (1963); Marteney v United States, 216 F2d 760 (CA10 1954); Martyn v United States, 176 F2d 609, 610 (CA8 1949); Wright v United States, 172 F2d 310, 312 (CA9 1949); Greathouse v United States, 170 F2d 512, 514 (CA4 1948).

The United States correctly points out that a number of later cases hold to the contrary. Neither it nor the Court observes, however, that the earlier line of authority bears the endorsement of this Court. In Gilbert v United States, 370 US 650, 8 L Ed 2d 750, 82 S Ct 1399 (1962), a case involving a statute very similar to § 2314, we approvingly cited Greathouse, Wright, and Marteney, supra, for the proposition that "cases construing 'forge' under other federal statutes have generally drawn a distinction between false or fraudulent statements and spurious or fictitious makings." 370 US, at 658, 8 L Ed 2d 750, 82 S Ct 1399. And we quoted Marteney for the principle that "[w]here the 'falsity lies in the representation of facts, not in the genuineness of execution,' it is not forgery." 370 US, at 658, 8 L Ed 2d 750, 82 S Ct 1399, quoting Marteney, supra, at 763-764. As I shall proceed to explain, Gilbert's approval of these cases' interpretation of "forge" necessarily includes an approval of their interpretation of "false making" as well. Moreover, the very holding of Gilbert is incompatible with the Court's decision today.

Gilbert was a prosecution under 18 USC § 495 [18 USCS § 495], which punishes anyone who "falsely makes, alters, forges, or counterfeits" any document for the purpose of obtaining money from the United States. The difference between that and the phrase at issue here ("falsely made, forged, altered, or counterfeited") is only the tense and the order of the words. The defendant in Gilbert had endorsed tax refund checks, made out to other persons, as "Trustee" for them. The Government contended that the represented agency capacity in fact did not exist, and that by reason of the misrepresentation § 495 had been violated. The Court rejected that contention and set Gilbert's conviction aside.

The indictment in Gilbert charged that the checks had been "forged," and so it was only that term, and not the totality of § 495, that the Court specifically addressed. It is plain from the opinion, however, that the Court understood "false making" (as I do) to be merely a recitation of the central element of forgery. Indeed, that is the whole basis for the decision. Thus, the Court's discussion of the common-law meaning of "forges" begins as follows:

> "In 1847 it was decided in the English case of Regina v White . . . that 'indorsing a bill of exchange under a false assumption of authority to indorse it per procuration, is not forgery, there being no false making.'" 370 US, at 655, 8 L Ed 2d 750, 82 S Ct 1399.

It later quotes the same case to the following effect:

> "Lord East's comments . . . were: '*Forgery* at common law denotes a *false* making (which includes every alteration of or addition to a true instrument), a making malo animo, of any written instrument for the purpose of fraud and deceit. . . . [The ancient and modern authorities] all consider the offence as consisting in the false and fraudulent making or altering of such and such instruments.'" Id., at 656, 8 L Ed 2d 750, 82 S Ct 1399 (emphasis in original).

[498 US 128]

The Court found it "significant that cases construing 'forge' under other federal statutes have generally drawn a distinction between false or fraudulent statements and spurious or fictitious makings." Id., at 658, 8 L Ed 2d 750, 82 S Ct 1399.

The whole rationale of the Gilbert decision, in other words, was that inserting fraudulent content could not constitute "forgery" because "forgery" requires "false making." It is utterly incompatible with that rationale to hold, as the Court does today, that inserting fraudulent content *constitutes* "false making."

IV

The Court acknowledges the principle that common-law terms ought to be given their established common-law meanings, but asserts that the principle is inapplicable here because the meaning of "falsely made" I have described above "was not universal." Ante, at 115, 112 L Ed 2d, at 463. For support it cites three cases and an ALR annotation. The annotation itself says that one of the three cases, United States v Hartman, 65 F 490 (ED Mo 1894), "has generally been disapproved, and has not been followed." Annot, 41 ALR 229, 249 (1926). (That general disapproval, incidentally, was implicitly endorsed by this Court itself in Gilbert, which interpreted the direct descendant of the statute involved in Hartman.) The other two cases cited by the Court are not mentioned by the annotation, and rightly so, since they discuss not falsity of content but genuineness of the instrument.[1] As for the annotation itself, that concludes that "the

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better view, and that supported by the majority opinion, is that . . . the genuine making of an instrument for the purpose of defrauding does not constitute the crime of forgery." 41 ALR, at 231. "Majority opinion" is an understatement. The annotation lists 16 States and the United States as supporting the view, and only 2 States (Kentucky and Tennessee) as opposing it. If such minimal "divergence"—by States with statutes that did not include the term "falsely made" (see supra, at 124-125, 112 L Ed 2d, at 468-469)—is sufficient to eliminate a common-law meaning long accepted by virtually all the courts and by apparently all the commentators, the principle of common-law meaning might as well be frankly abandoned. In Gilbert, it should be noted, we did not demand "universal" agreement, but simply rejected "scattered federal cases relied on by the Government" that contradicted the accepted common-law meaning. 370 US, at 658, 8 L Ed 2d 750, 82 S Ct 1399.

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[1] In re Count de Toulouse Lautrec, 102 F 878 (CA7 1900), involved sample interest coupons which the petitioner obtained and passed off as genuine. The court upheld the conviction for uttering a forged instrument, because the coupons were not "genuine obligations of the purported promisors, but were, instead, false instruments," id., at 879, and "not genuine in fact," id., at 880.

In State v Shurtliff, 18 Me 368 (1841), the defendant had procured a signature upon a deed by misrepresenting the nature of the document signed (the deed did not contain false information). The court held that such conduct was forgery, because the resulting deed was a "false instrument," "purport[ing] to be the solemn and voluntary act of the grantor," which it was not. Id., at 371.

These decisions perhaps stretch the concept of what constitutes a non-genuine instrument, but neither purports to hold that the insertion of fraudulent content constitutes "false making" or forgery.

The Court's second reason for refusing to give "falsely made" its common-law meaning is that "Congress' general purpose in enacting a law may prevail over this rule of statutory construction." Ante, at 117, 112 L Ed 2d, at 464. That is undoubtedly true in the sense that an explicitly stated statutory purpose that contradicts a common-law meaning (and that accords with another, "ordinary" meaning of the contested term) will prevail. The Court, however, means something quite different. What displaces normal principles of construction here, according to the Court, is "Congress' broad purpose in enacting § 2314—namely, to criminalize trafficking in fraudulent securities that exploits interstate commerce." Ibid. But that analysis does *not* rely upon any explicit language, and is simply question-begging. The whole issue before us here is

how "broad" Congress' purpose in enacting § 2314 was. Was it, as the Court simply announces, "to criminalize trafficking in *fraudulent* securities"? Or was it to exclude trafficking in *forged* securities? The answer to that question is best sought by examining the language that Congress used—here, language that Congress has used since 1790 to describe not fraud but forgery, and that we reaffirmed bears that meaning as recently as 1962 (in Gilbert). It is perverse to find the answer by assuming it, and then to impose that answer upon the text.

The "Congress' broad purpose" approach is not supported by the authorities the Court cites.[2] There is, however, one case in which it does appear. It was proposed by the Government, and rejected by the Court, in Gilbert:

> "Nor are we impressed with the argument that 'forge' in § 495 should be given a broader scope than its common-law meaning because contained in a statute aimed at protecting the Government against fraud. Other federal statutes are ample enough to protect the Government against fraud and false statements. . . . Still further, it is significant that cases construing 'forge' under other
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> federal statutes have generally drawn a distinction between false or fraudulent statements and spurious or fictitious makings." 370 US, at 658, 8 L Ed 2d 750, 82 S Ct 1399 (footnote omitted).

We should have rejected the argument in precisely those terms today. Instead, the Court adopts a new principle that can accurately be described as follows: "Where a term of art has a plain meaning, the Court will divine the statute's purpose and substitute a meaning more appropriate to that purpose."

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[2] Taylor v United States, 495 US 575, 109 L Ed 2d 607, 110 S Ct 2143 (1990), cited ante, at 117, 112 L Ed 2d, at 464, stands for the quite different proposition that a common-law meaning *obsolete when a statute is enacted* does not control the "generally accepted contemporary meaning of a term." Taylor, supra, at 596, 109 L Ed 2d 607, 110 S Ct 2143. As I have discussed at length in Parts I and II, the common-law meaning of "falsely made" was alive and well in 1939, and its then (and now) contemporary meaning does not contradict that common-law meaning anyway. Bell v United States, 462 US 356, 360-361, 76 L Ed 2d 638, 103 S Ct 2398 (1983), cited ante, at 117, 112 L Ed 2d, at 464, turns upon the fact that the common-law term relied upon ("takes and carries away," one of the elements of common-law larceny) was combined with other terms and provisions that unquestionably went beyond common-law larceny. Here, by contrast, the entire phrase at issue is a classic description of forgery. McElroy v United States, 455 US 642, 71 L Ed 2d 522, 102 S Ct 1332 (1982), and United States v Sheridan, 329 US 379, 91 L Ed 359, 67 S Ct 332 (1946), cited ante, at 110, 112 L Ed 2d, at 460, do not use Congress' "broad purpose" to depart from any common-law meaning, but rather to interpret the ambiguous terms "interstate commerce" (McElroy) and "cause to be transported" (Sheridan).

V

I feel constrained to mention, though it is surely superfluous for decision of the present case, the so-called rule of lenity—the venerable principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute." United States v Gradwell, 243 US 476, 485, 61 L Ed 857, 37 S Ct 407 (1917) (internal quotation marks omitted). See also, McNally v United States, 483 US 350, 359-360, 97 L Ed 2d 292, 107 S Ct 2875 (1987). As Justice Marshall explained some years ago:

> "This principle is founded on two policies that have long been part of our tradition. First, a 'fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' McBoyle v United States, 283 US 25, 27 [75 L Ed 816, 51 S Ct 340] (1931) (Holmes, J.) . . . Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity. This policy embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.' H. Friendly, Mr. Justice Frankfurter and The Reading of Statutes, in Benchmarks, 196, 209 (1967)." United States v Bass, 404 US 336, 347-349, 30 L Ed 2d 488, 92 S Ct 515 (1971).

"Falsely made, forged, altered, or counterfeited" had a plain meaning in 1939, a meaning recognized by five Circuit courts and approved by this Court in Gilbert. If the rule of lenity means anything, it means that the Court ought not do what it does today: use an ill-defined general purpose to override an unquestionably clear term of art, and (to make matters worse) give the words a meaning that even one unfamiliar with the term of art would not imagine. The temptation to stretch the law to fit the evil is an ancient one, and it must be resisted. As Chief Justice Marshall wrote:

> "The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorise us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated." United States v Wiltberger, 5 Wheat 76, 96, 5 L Ed 37 (1820).

For the foregoing reasons, I respectfully dissent.

[498 US 133]

INGERSOLL-RAND COMPANY, Petitioner

v

PERRY McCLENDON

498 US 133, 112 L Ed 2d 474, 111 S Ct 478

[No. 89-1298]

Argued October 9, 1990. Decided December 3, 1990.

Decision: State common-law claim of wrongful discharge to prevent attainment of benefits under pension plan held pre-empted by ERISA (29 USCS §§ 1001 et seq.).

SUMMARY

An employee was fired and brought a wrongful discharge action in Texas state court against his former employer, alleging that his pension would have vested in another 4 months and that a principal reason for his termination was the employer's desire to avoid making contributions to his pension fund. The employee sought compensatory and punitive damages based on various tort and contract theories, but did not assert any cause of action based on the Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.). After some discovery, the employer was granted a summary judgment. The Court of Appeals of Texas affirmed, stating that the employee's employment was terminable at will (757 SW2d 816). The Supreme Court of Texas, however, reversed and remanded the case for trial, stating that (1) public policy imposes certain limitations upon an employer's power to discharge at-will employees; (2) the state has an interest in protecting employees' interests in pension plans; (3) under Texas law a plaintiff could recover in a wrongful discharge action if he established that the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund; and (4) although federal courts had held similar claims pre-empted by ERISA, the present case was distinguishable on the grounds that the employee was seeking to recover on the bases of future lost wages, mental anguish, and punitive damages, rather than lost pension benefits (779 SW2d 69).

On certiorari, the United States Supreme Court reversed. In an opinion

Briefs of Counsel, p 1226, infra.

by O'Connor, J., joined by Rehnquist, Ch. J., and White, Scalia, Kennedy, and Souter, JJ., with respect to point (1) below, and expressing the unanimous view of the court with respect to point (2) below, it was held that (1) the employee's claim was expressly pre-empted by § 514(a) of ERISA (29 USCS § 1144(a)), which provides for pre-emption of all state laws—including judicial decisions having the force of law—which "relate to" an employee benefit plan covered by ERISA; and (2) even if there were no express pre-emption, the claim would be pre-empted as conflicting directly with an ERISA cause of action, inasmuch as § 510 of ERISA (29 USCS § 1140) protects employee benefit plan participants from termination motivated by an employer's desire to prevent a pension from vesting, and § 502(a) (29 USCS § 1132(a)) provides an exclusive federal remedy for violation of rights guaranteed under ERISA.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Pensions and Retirement Funds § 1; States, Territories, and Possessions §§ 38, 46; Statutes §§ 102, 103 — wrongful discharge claim — pre-emption by ERISA — express pre-emption — purpose of statute — implied pre-emption — exclusive federal remedy

1a-1h. A state common-law claim by an employee against his former employer for wrongful discharge—which claim (1) is based on allegations that the employee was dis-

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60A Am Jur 2d, Pensions and Retirement Funds §§ 115, 118, 123, 130

31 Am Jur Trials 317, Wrongful Discharge of At-Will Employee

29 USCS §§ 1132(a), 1140, 1144(a), 1144(c)(2)

RIA Employment Coordinator ¶¶ B-10,705, B-10,707, B-10,708, B-10,740

RIA Pension Coordinator ¶ 51,702

US L Ed Digest, Pensions and Retirement Funds § 1; States, Territories, and Possessions §§ 38, 46

Index to Annotations, Discharge from Employment or Office; Employee Retirement Income Security Act; Pre-emption; States

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 USCS §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)). 87 ALR Fed 797.

Pre-emption of state fair employment laws under provisions of § 514 of Employee Retirement Income Security Act (29 USCS § 1144). 72 ALR Fed 489.

Damages recoverable for wrongful discharge of at-will employee. 44 ALR4th 1131.

Modern status of rule that employer may discharge at-will employee for any reason. 12 ALR4th 544.

What law governs employee's right to damages for wrongful discharge. 62 ALR2d 917.

charged from employment principally to prevent his attainment of benefits under an employee benefit plan governed by the Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.), (2) seeks compensatory and punitive damages under tort and contract theories but does not assert any cause of action under ERISA nor seek relief for lost pension benefits, and (3) is held by the state's highest court to state a cause of action under state law—is pre-empted by ERISA, because (1) § 514(a) of ERISA (29 USCS § 1144(a)), which provides that ERISA supersedes all state laws—including judicial decisions having the effect of law—which "relate to" any employee benefit plan covered by ERISA, expressly pre-empts the claim, inasmuch as (a) the claim relates to an ERISA-covered plan because it makes specific reference to, and is premised on, the existence of a pension plan, (b) § 514(c)(2) of ERISA (29 USCS § 1144(c)(2)), which defines the term "State" to include a state, any political subdivisions thereof, or any agency or instrumentality of either which purports to regulate directly or indirectly the terms and conditions of employee benefit plans covered by ERISA, does not cause § 514(a) to pre-empt only those state laws that affect plan terms, conditions, or administration, (c) § 514(a) was intended to insure that plans and plan sponsors would be subject to a uniform body of benefit law in order to minimize the administrative and financial burden of complying with conflicting directives among states or between states and the Federal Government, and allowing state claims such as that described above would subject plans and plan sponsors to burdens not unlike those that Congress sought to foreclose through § 514(a); and (2) even if § 514(a) does not expressly pre-empt the claim, the claim is pre-empted as conflicting directly with an ERISA cause of action, inasmuch as (a) § 510 of ERISA (29 USCS § 1140) protects participants in an employee benefit plan from termination motivated by an employer's desire to prevent a pension from vesting, (b) although the mere existence of a federal regulatory or enforcement scheme, even a considerably detailed one, does not imply pre-emption of state remedies absent a special feature warranting pre-emption, § 502(a) of ERISA (29 USCS § 1132(a)), which provides that a civil action may be brought to enjoin or redress ERISA violations and that the United States District Courts shall have exclusive jurisdiction over such actions, was intended by Congress to be the exclusive remedy for rights guaranteed under ERISA and is precisely the kind of special feature that warrants pre-emption in this case, and (c) it is no answer to a pre-emption argument to say that the claim is not within the purview of ERISA because the employee is not seeking recovery of pension benefits, inasmuch as there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek pension benefits, and the relief requested is well within the power of federal courts to provide.

Pensions and Retirement Funds § 1 — purpose of ERISA

2. The Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.) is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans.

States, Territories, and Possessions § 22; Statutes §§ 91, 100, 109, 164 — pre-emption of state law — intent of Congress — language, structure, and purpose of statute

3. The question whether a certain state action is pre-empted by federal law is one of congressional intent; the purpose of Congress is the ultimate touchstone; to discern Congress' intent, the United States Supreme Court will examine the explicit statutory language and the structure and purpose of the statute.

States, Territories, and Possessions § 38 — pre-emptive effect of ERISA

4. The deliberately expansive language of the pre-emption clause contained in § 514(a) of the Employee Retirement Income Security Act (29 USCS § 1144(a)) is designed to establish pension plan regulation as exclusively a federal concern.

States, Territories, and Possessions § 38; Statutes § 108.5 — state laws — pre-emption by ERISA — definition of "state law"

5. In the pre-emption clause contained in § 514(a) of the Employee Retirement Income Security Act (ERISA) (29 USCS § 1144(a))—which clause provides generally that the provisions of ERISA shall supersede any and all state laws which relate to an employee benefit plan covered by ERISA—the words "relate to" are used in their broad sense, Congress having rejected more limited pre-emption language that would have made the clause applicable to only state laws relating to the specific subjects covered by ERISA; moreover, to underscore the intent of Congress that § 514(a) be expansively applied, equally broad language is used in § 514(c)(1) (29 USCS § 1144(c)(1)), defining the "state law" that is pre-empted as including all laws, decisions, rules, regulations, or other state action having the effect of law.

States, Territories, and Possessions § 38; Statutes § 165 — state laws — pre-emption by ERISA — common-sense meaning

6. For the purposes of the pre-emption clause contained in § 514(a) of the Employee Retirement Income Security Act (ERISA) (29 USCS § 1144(a))—which clause provides generally that the provisions of ERISA shall supersede any and all state laws which "relate to" an employee benefit plan covered by ERISA—a law "relates to" an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan; under this broad common-sense meaning, a state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect; pre-emption is also not precluded simply because a state law is consistent with ERISA's substantive requirements.

Courts § 775; Pensions and Retirement Funds § 1; States, Territories, and Possessions § 38; Statutes §§ 109, 110 — employee benefit plans — state regulation — pre-emption by ERISA — other sections of statute — avoidance of superfluity — adherence to prior decision

7a, 7b. Section 514(c)(2) of the Employee Retirement Income Security

Act (ERISA) (29 USCS § 1144(c)(2))—which defines the term "State" to include a state, any political subdivisions thereof, or any agency or instrumentality of either which purports to regulate directly or indirectly the terms and conditions of employee benefit plans covered by ERISA—does not cause § 514(a) of ERISA (29 USCS § 1144(a))—which provides generally that the provisions of ERISA shall supersede any and all state laws which relate to an employee benefit plan covered by ERISA—to pre-empt only those state laws that affect plan terms, conditions, or administration, inasmuch as (1) § 514(c)(2) expands rather than restricts ERISA's definition of "state," contained in a prior section, for pre-emption purposes in order to include state agencies and instrumentalities whose actions might not otherwise be considered state law; (2) had Congress intended to restrict ERISA's pre-emptive effect to state laws purporting to regulate plan terms and conditions, it would not have done so by placing the restriction in an adjunct definition section of the statute while using the broad phrase "relate to" in the pre-emption section itself; (3) if § 514(a) were thus restricted by § 514(c)(2), the "relate to" language of § 514(a) would be superfluous, inasmuch as Congress need only have said that "all" state laws would be pre-empted; and (4) a Supreme Court precedent, which held pre-empted a state law that clearly did not regulate the terms or conditions of ERISA-covered plans, forecloses the contention that § 514(c)(2) restricts the scope of § 514(a) in this manner.

States, Territories, and Possessions § 46; Statutes §§ 134, 145 — state remedies — pre-emption by ERISA — legislative history — similar provision of LMRA

8a, 8b. The legislative history of the Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.) makes clear that the pre-emptive force of § 502(a) of ERISA (29 USCS § 1132(a))—which provides that a civil action may be brought by a participant in an employee benefit plan governed by ERISA to enjoin or remedy any violation of rights guaranteed under ERISA, and that the United States District Courts shall have exclusive jurisdiction of such actions—was modeled on the exclusive remedy provided by § 301 of the Labor Management Relations Act (29 USCS § 185), which displaced all state-law claims, even when the state action purported to authorize a remedy unavailable under the federal provision; accordingly, when it is clear or may fairly be assumed that the activities which a state purports to regulate are protected by § 510 of ERISA (29 USCS § 1140), due regard for the federal enactment requires that state jurisdiction must yield.

SYLLABUS BY REPORTER OF DECISIONS

After petitioner company fired respondent McClendon, he filed a wrongful discharge action under various state law tort and contract theories, alleging that a principal reason for his termination was the company's desire to avoid contributing to his pension fund. The Texas court granted the company summary judgment, and the State Court of Appeals affirmed, ruling that McClendon's employment was terminable at will. The State Supreme Court reversed and remanded for trial, holding that public policy required recognition of an exception to the employment-at-will doctrine. Therefore, recovery would be permitted in a wrongful discharge action if the plaintiff could prove that "the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." In distinguishing federal cases holding similar claims pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA), the court reasoned that McClendon was seeking future lost wages, recovery for mental anguish, and punitive damages rather than lost pension benefits.

Held: ERISA's explicit language and its structure and purpose demonstrate a congressional intent to pre-empt a state common law claim that an employee was unlawfully discharged to prevent his attainment of benefits under an ERISA-covered plan.

(a) The cause of action in this case is expressly pre-empted by § 514(a) of ERISA, which broadly declares that that statute supersedes all state laws (including decisions having the effect of law) that "relate to" any covered employee benefit plan. In order to prevail on the cause of action, as formulated by the Texas Supreme Court, a plaintiff must plead, and the trial court must find, that an ERISA plan exists and the employer had a pension-defeating motive in terminating the employment. Because the existence of a plan is a critical factor in establishing liability, and the trial court's inquiry must be directed to the plan, this judicially created cause of action "relate[s] to" an ERISA plan. Cf. Mackey v Lanier Collection Agency & Service, Inc. 486 US 825, 828, 100 L Ed 2d 836, 108 S Ct 2182. Id., at 841, 100 L Ed 2d 836, 108 S Ct 2182, and Fort Halifax Packing Co. v Coyne, 482 US 1, 12, 23, 96 L Ed 2d 1, 107 S Ct 2211, distinguished. In arguing that the plan is irrelevant to the cause of action because all that is at issue is the employer's improper motive, McClendon misses the point, which is that under the state court's analysis there simply is *no* cause of action if there is no plan. Similarly unavailing is McClendon's argument that § 514(c)(2)—which defines "State" to include any state instrumentality purporting to regulate the terms and conditions of covered plans—causes § 514(a) to pre-empt only those state laws that affect plan terms, conditions, or administration and not those that focus on the employer's termination decision. That argument misreads § 514(c)(2) and consequently misapprehends its purpose of expanding ERISA's general definition of "State" to *"include"* state instrumentalities whose actions might not otherwise be considered state law for pre-emption purposes; would render § 514(a)'s "relate to" language superfluous, since Congress need only have said that "all" state laws would be pre-empted; and is foreclosed by this Court's precedents, see Mackey, supra, at 828, and n 2, 829, 100 L Ed 2d 836, 108 S Ct 2182. Pre-emption here is also supported by § 514(a)'s goal of ensuring uniformity in pension law, since allowing state based actions like the one at issue might subject plans and plan sponsors to conflicting substantive requirements developed by the courts of each jurisdiction.

(b) The Texas cause of action is also pre-empted because it conflicts directly with an ERISA cause of action. McClendon's claim falls squarely within ERISA § 510 which prohibits the discharge of a plan participant "for the purpose of interfering with [his] attainment of any right . . . under the plan." However, that in itself does not imply pre-emption of state remedies absent "special features" warranting pre-emption. See, e.g., English v General Electric Co. 496 US 72, 87, 110 L Ed 2d 65, 110 S Ct 2270. Such a " 'special featur[e]' " exists in the form of § 502(a), which authorizes a civil action by a plan participant to enforce ERISA's or the plan's terms, gives the federal district courts exclusive jurisdiction of such actions, and has been held to be the exclusive remedy for rights guaranteed by ERISA, including those provided by § 510, Pilot Life Ins. Co. v Dedeaux, 481 US 41, 52, 54-55, 95 L Ed 2d 39, 107 S Ct 1549. Thus, the lower court's attempt to distinguish this case as not one within ERISA's purview is without merit. Moreover, since there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits," it is clear that the relief requested here is well within the power of federal courts; the fact that a particular plaintiff is not seeking recovery of pension benefits is no answer to a pre-emption argument.

779 SW2d 69, reversed.

O'Connor, J., delivered the opinion for a unanimous Court with respect to Parts I and II-B, and the opinion of the Court with respect to Part II-A, in which Rehnquist, C.J., and White, Scalia, Kennedy, and Souter, JJ., joined.

APPEARANCES OF COUNSEL

Hollis T. Hurd argued the cause for petitioner.

Christopher J. Wright argued the cause for the United States, as amicus curiae, in support of petitioner, by special leave of court.

John W. Tavormina argued the cause for respondent.

Briefs of Counsel, p 1226, infra.

OPINION OF THE COURT

[498 US 135]

Justice **O'Connor** delivered the opinion of the Court.*

[1a] This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat 829, as amended, 29 USC § 1001 et seq. [29 USCS §§ 1001 et seq.], pre-empts a state common law claim that an employee was unlawfully discharged to prevent his attainment of benefits under a plan covered by ERISA.

I

Petitioner Ingersoll-Rand Company employed respondent Perry McClendon as a salesman and distributor of construction equipment. In 1981, after McClendon had worked for the company for nine years and eight months, the company fired him citing a companywide reduction in force. McClendon sued the company in Texas state court, alleging that his pension would have vested in another four months and that a principal reason for his termination was the company's desire

[498 US 136]

to avoid making contributions to his pension fund. McClendon did not realize that pursuant to applicable regulations, see 29 CFR § 2530.200b-4 (1990) (break-in-service regulation), he had already been credited with sufficient service to vest his pension under the plan's 10-year requirement. McClendon sought compensatory and punitive damages under various tort and contract theories; he did not assert any cause of action under ERISA. After a period of discovery, the company moved for, and obtained, summary judgment on all claims. The State Court of Appeals affirmed, holding that McClendon's employment was terminable at will. 757 SW2d 816 (1988).

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* Justice **Marshall,** Justice **Blackmun,** and Justice **Stevens** join Parts I and II-B of this opinion.

In a 5 to 4 decision, the Texas Supreme Court reversed and remanded for trial. The majority reasoned that notwithstanding the traditional employment-at-will doctrine, public policy imposes certain limitations upon an employer's power to discharge at-will employees. Citing Tex Rev Civ Stat Ann, Title 110B (Vernon 1988 pamphlet), and § 510 of ERISA, the majority concluded that "the state has an interest in protecting employees' interests in pension plans." 779 SW2d 69, 71 (1989). As support the court noted that "[t]he very passage of ERISA demonstrates the great significance attached to income security for retirement purposes." Ibid. Accordingly, the court held that under Texas law a plaintiff could recover in a wrongful discharge action if he established that "the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." Ibid. The court noted that federal courts had held similar claims pre-empted by ERISA, but distinguished the present case on the basis that McClendon was "*not* seeking lost *pension benefits* but [was] instead seeking lost future wages, mental anguish and punitive damages as a result of the wrongful discharge." Id., at 71, n 3 (emphasis in original).

Because this issue has divided state and federal courts,† we granted certiorari, 494 US 1078, 108 L Ed 2d 935, 110 S Ct 1804 (1990), and now reverse.

II

[2] "ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." Shaw v Delta Air Lines, Inc., 463 US 85, 90, 77 L Ed 2d 490, 103 S Ct 2890 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." Id., at 91, 77 L Ed 2d 490, 103 S Ct 2890 (citation omitted). As part of this closely integrated regulatory system Congress included various safeguards to preclude abuse and "to completely secure the rights and expectations brought into being by this landmark reform legislation." S Rep No 93-127, p 36 (1973). Prominent among these safeguards are three provisions of particular relevance to this case: § 514(a), 29 USC § 1144(a) [29 USCS § 1144(a)], ERISA's broad pre-emption provision; § 510, 29 USC § 1140 [29 USCS § 1140], which proscribes interference with rights protected by ERISA; and § 502(a), 29 USC § 1132(a) [29 USCS § 1132(a)], a " 'carefully integrated' " civil enforcement scheme that "is one of the essential tools for accomplishing the stated purposes of ERISA." Pilot Life Ins. Co. v Dedeaux, 481 US 41, 52, 54, 95 L Ed 2d 39, 107 S Ct 1549 (1987).

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† See, e.g., Fitzgerald v Codex Corp., 882 F2d 586 (CA1 1989) (ERISA pre-empts state wrongful discharge actions premised on employer interference with the attainment of rights under employee benefit plans); Pane v RCA Corp., 868 F2d 631 (CA3 1989) (same); Sorosky v Burroughs Corp. 826 F2d 794 (CA9 1987) (same). Accord, Conaway v Eastern Associated Coal Corp., —— W Va ——, 358 SE2d 423 (1986). Contra, K Mart Corp. v Ponsock, 103 Nev 39, 732 P2d 1364 (1987); Hovey v Lutheran Medical Center, 516 F Supp 554 (EDNY 1981); Savodnik v Korvettes, Inc., 488 F Supp 822 (EDNY 1980).

[3] We must decide whether these provisions, singly or in combination, pre-empt the cause of action at issue in this case. "[T]he question whether a certain state action is pre-empted [498 US 138] by federal law is one of congressional intent. 'The purpose of Congress is the ultimate touchstone.' " Allis-Chalmers Corp. v Lueck, 471 US 202, 208, 85 L Ed 2d 206, 105 S Ct 1904 (1985) (internal quotation marks omitted) (quoting Malone v White Motor Corp., 435 US 497, 504, 55 L Ed 2d 443, 98 S Ct 1185 (1978)). To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. See FMC Corp. v Holliday, ante, at 56, 112 L Ed 2d 356, 111 S Ct 403 (citing Shaw, supra, at 95, 77 L Ed 2d 490, 103 S Ct 2890). Regardless of the avenue we follow—whether explicit or implied pre-emption—this state law cause of action cannot be sustained.

A

Where, as here, Congress has expressly included a broadly worded pre-emption provision in a comprehensive statute such as ERISA, our task of discerning congressional intent is considerably simplified. In § 514(a) of ERISA, as set forth in 29 USC § 1144(a) [29 USCS § 1144(a)], Congress provided:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

[4, 5] "The pre-emption clause is conspicuous for its breadth." FMC Corp., ante, at 58, 112 L Ed 2d 356, 111 S Ct 403. Its "deliberately expansive" language was "designed to 'establish pension plan regulation as exclusively a federal concern.' " Pilot Life, supra, at 46, 95 L Ed 2d 39, 107 S Ct 1549 (quoting Alessi v Raybestos-Manhattan, Inc., 451 US 504, 523, 68 L Ed 2d 402, 101 S Ct 1895 (1981)). The key to § 514(a) is found in the words "relate to." Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause "applicable only to state laws relating to the specific subjects covered by ERISA." Shaw, supra, at 98, 77 L Ed 2d 490, 103 S Ct 2890. Moreover, to underscore its intent that § 514(a) be expansively applied, Congress used equally broad language in defining [498 US 139] the "State law" that would be pre-empted. Such laws include "all laws, decisions, rules, regulations, or other State action having the effect of law." § 514(c)(1), 29 USC § 1144(c)(1) [29 USCS § 1144(c)(1)].

[6] "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Shaw, supra, at 96-97, 77 L Ed 2d 490, 103 S Ct 2890. Under this "broad common-sense meaning," a state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect. Pilot Life, supra, at 47, 95 L Ed 2d 39, 107 S Ct 1549. See also Alessi v Raybestos-Manhattan, Inc., supra, at 525, 68 L Ed 2d 402, 101 S Ct 1895. Pre-emption is also not precluded simply because a state law is consistent with ERISA's substantive requirements. Metropolitan Life Ins. Co. v Massachusetts, 471 US 724, 739, 85 L Ed 2d 728, 105 S Ct 2380 (1985).

[1b] Notwithstanding its breadth, we have recognized limits to ERISA's pre-emption clause. In Mackey v Lanier Collection Agency & Service, Inc., 486 US 825, 100 L Ed 2d 836, 108 S Ct 2182 (1988), the Court held that ERISA did not pre-empt a State's general garnishment statute, even though it was applied to collect judgments against plan participants. Id., at 841, 100 L Ed 2d 836, 108 S Ct 2182. The fact that collection might burden the administration of a plan did not, by itself, compel pre-emption. Moreover, under the plain language of § 514(a) the Court has held that only state laws that relate to benefit plans are pre-empted. Fort Halifax Packing Co. v Coyne, 482 US 1, 23, 96 L Ed 2d 1, 107 S Ct 2211 (1987). Thus, even though a state law required payment of severance benefits, which would normally fall within the purview of ERISA, it was not pre-empted because the statute did not require the establishment or maintenance of an ongoing plan. Id., at 12, 96 L Ed 2d 1, 107 S Ct 2211.

Neither of these limitations is applicable to this case. We are not dealing here with a generally applicable statute that makes no reference to, or indeed functions irrespective of, the existence of an ERISA plan. Nor is the cost of defending this lawsuit a mere administrative burden. Here, the existence of a pension plan is a critical factor in establishing

liability under the State's wrongful discharge law. As a result, this cause of action relates not merely to pension benefits, but to the essence of the pension *plan* itself.

We have no difficulty in concluding that the cause of action which the Texas Supreme Court recognized here—a claim that the employer wrongfully terminated plaintiff primarily because of the employer's desire to avoid contributing to, or paying benefits under, the employee's pension fund—"relate[s] to" an ERISA-covered plan within the meaning of § 514(a), and is therefore pre-empted.

"[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under § 514(a)." Mackey, supra, at 829, 100 L Ed 2d 836, 108 S Ct 2182. In Mackey the statute's express reference to ERISA plans established that it was so designed; consequently, it was pre-empted. The facts here are slightly different but the principle is the same: The Texas cause of action makes specific reference to, and indeed is premised on, the existence of a pension plan. In the words of the Texas court, the cause of action "allows recovery when the plaintiff proves that the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." 779 SW2d, at 71. Thus, in order to prevail, a plaintiff must plead, and the court must find, that an ERISA plan exists and the employer had a pension-defeating motive in terminating the employment. Because the court's inquiry must be directed to the plan, this judicially created cause of action "relate[s] to" an ERISA plan.

McClendon argues that the pension plan is irrelevant to the Texas cause of action because all that is at issue is the employer's improper motive to avoid its pension obligations. The argument misses the point, which is that under the Texas court's analysis there simply is no cause of action if there is no plan.

[498 US 141]

[1c, 7a] Similarly unavailing is McClendon's argument that § 514(a) is limited by the narrower language of § 514(c)(2), as set forth in 29 USC § 1144(c)(2) [29 USCS § 1144(c)(2)], which provides:

> "The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter."

[1d, 7b] McClendon argues that § 514(c)(2)'s limiting language causes § 514(a) to pre-empt only those state laws that affect plan terms, conditions, or administration. Since the cause of action recognized by the Texas court does not focus on those items but rather on the employer's termination decision, McClendon claims that there can be no pre-emption here.

The flaw in this argument is that it misreads § 514(c)(2) and consequently misapprehends its purpose. The ERISA definition of "State" is found in § 3(10), which defines the term as "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone." 29 USC § 1002(10) [29 USCS § 1002(10)]. Section 514(c)(2) expands, rather than restricts, that definition for pre-emption purposes in order to *"include"* state agencies and instrumentalities whose actions might not otherwise be considered state law. Had Congress intended to restrict ERISA's pre-emptive effect to state laws purporting to regulate plan terms and conditions, it surely would not have done so by placing the restriction in an adjunct definition section while using the broad phrase "relate to" in the pre-emption section itself. Moreover, if § 514(a) were construed as McClendon urges, the "relate to" language would be superfluous—Congress need only have said that "all" state laws would be pre-empted. Moreover, our precedents foreclose this argument. In Mackey the Court held that ERISA pre-empted a Georgia garnishment statute that *excluded* from garnishment ERISA plan benefits. Mackey, supra, at 828, and n 2, 829, 100 L Ed 2d 836, 108 S Ct 2182. Such a law clearly did not regulate the

[498 US 142]

terms or conditions of ERISA-covered plans, and yet we found pre-emption. Mackey demonstrates that § 514(a) cannot be read so restrictively.

[1e] The conclusion that the cause of action in this case is pre-empted by § 514(a) is supported by our understanding of the purposes of that provision. Section 514(a) was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries. FMC Corp., ante, at 60, 112 L Ed 2d 356, 111 S Ct 403 (citing Fort Halifax, 482 US, at 10-11, 96 L Ed 2d 1, 107 S Ct 2211); Shaw, 463 US, at 105, and n 25, 77 L Ed 2d 490, 103 S Ct 2890. Allowing state based actions like the one at issue here would subject plans and plan sponsors to burdens not unlike those that Congress sought to foreclose through § 514(a). Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct, requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction. Such an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement.

B

[1f] Even if there were no express pre-emption in this case, the Texas cause of action would be pre-empted because it conflicts directly with an ERISA cause of action. McClendon's claim falls squarely within the ambit of ERISA § 510, which provides:

> "It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . *or for the purpose of interfering with the attainment*
>
>
>
> of any right to which such participant may become entitled under the plan . . . ." 29 USC § 1140 [29 USCS § 1140] (emphasis added).

By its terms § 510 protects plan participants from termination motivated by an employer's desire to prevent a pension from vesting. Congress viewed this section as a crucial part of ERISA because, without it, employers would be able to circumvent the provision of promised benefits. S Rep No. 93-127, pp 35-36 (1973); HR Rep No. 93-533, p 17 (1973). We have no doubt that this claim is prototypical of the kind Congress intended to cover under § 510.

"[T]he mere existence of a federal regulatory or enforcement scheme," however, even a considerably detailed one, "does not by itself imply pre-emption of state remedies." English v General Electric Co., 496 US 72, 87, 110 L Ed 2d 65, 110 S Ct 2270 (1990). Accordingly, " 'we must look for special features warranting pre-emption.' " Ibid. (quoting Hillsborough County v Automated Medical Laboratories, Inc., 471 US 707, 719, 85 L Ed 2d 714, 105 S Ct 2371 (1985)).

Of particular relevance in this inquiry is § 502(a)—ERISA's civil enforcement mechanism. That section, as set forth in 29 USC §§ 1132(a)(3), (e) [29 USCS §§ 1132(a)(3), (e)], provides in pertinent part:

> "A civil action may be brought—
>
> . . . . .
>
> "(3) by a participant . . . (A) to

> enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;
>
> . . . . .
>
> "(e) (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have *exclusive jurisdiction* of civil actions under this subchapter brought by . . . a participant." (Emphasis added.)

[498 US 144]

In Pilot Life we examined this section at some length and explained that Congress intended § 502(a) to be the exclusive remedy for rights guaranteed under ERISA, including those provided by § 510:

> "[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.' " 481 US, at 54, 95 L Ed 2d 39, 107 S Ct 1549 (quoting Massachusetts Mut. Life Ins. Co. v Russell, 473 US 134, 146, 87 L Ed 2d 96, 105 S Ct 3085 (1985)).

[1g, 8a] It is clear to us that the exclusive remedy provided by § 502(a) is precisely the kind of " 'special featur[e]' " that " 'warrant[s] pre-emption' " in this case. English, supra, at 87, 110 L Ed 2d 65, 110 S Ct 2270; see also Automated Medical, supra, at 719, 85 L Ed 2d 714, 105 S Ct 2371. As we explained in Pilot Life, ERISA's legislative history makes clear that "the pre-emptive force of § 502(a) was modeled on the exclusive remedy provided by § 301 of the Labor Management Relations Act, 1947 (LMRA), 61 Stat 156, 29 USC § 185 [29 USCS § 185]." 481 US, at 52, 95 L Ed 2d 39, 107 S Ct 1549; id., at 54-55, 95 L Ed 2d 39, 107 S Ct 1549 (citing HR Conf Rep No. 93-1280, p 327 (1974)). "Congress was well aware that the powerful pre-emptive force of § 301 of the LMRA displaced" all state-law claims, "even when the state action purported to authorize a remedy unavailable under the federal provision." Pilot Life, supra, at 55, 95 L Ed 2d 39, 107 S Ct 1549. In Metropolitan Life Ins. Co. v Taylor, 481 US 58, 95 L Ed 2d 55, 107 S Ct 1542 (1987), we again

[498 US 145]

drew upon the parallel between §§ 502(a) and 301 of the LMRA to support our conclusion that the pre-emptive effect of § 502(a) was so complete that an ERISA pre-emption defense provides a sufficient basis for removal of a cause of action to the federal forum notwithstanding the traditional limitation imposed by the "well-pleaded complaint" rule. Id., at 64-67, 95 L Ed 2d 55, 107 S Ct 1542.

[8b] We rely on this same evidence in concluding that the requirements of conflict pre-emption are satisfied in this case. Unquestionably, the Texas cause of action purports to provide a remedy for the violation of a right expressly guaranteed by § 510 and exclusively enforced by § 502(a). Accordingly we hold that " '[w]hen it is clear or may fairly be assumed that the activities which a State purports to regulate are protected" by § 510 of ERISA, "due regard for the federal enactment requires that state jurisdiction must yield.' " Cf. Lingle v Norge Division of Magic Chef, Inc., 486 US 399, 409, n 8, 100 L Ed 2d 410, 108 S Ct 1877 (1988).

[1h] The preceding discussion also responds to the Texas court's attempt to distinguish this case as not one within ERISA's purview. Not only is § 502(a) the exclusive remedy for vindicating § 510-protected rights, but there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits." It is clear that the relief requested here is well within the power of federal courts to provide. Consequently, it is no answer to a pre-emption argument that a particular plaintiff is not seeking recovery of pension benefits.

The judgment of the Texas Supreme Court is reversed.

It is so ordered.

[498 US 146]

ROBERT S. MINNICK, Petitioner

v

MISSISSIPPI

498 US 146, 112 L Ed 2d 489, 111 S Ct 486

[No. 89-6332]

Argued October 3, 1990. Decided December 3, 1990.

Decision: Police officer's reinitiation of custodial interrogation of accused without counsel present, after accused had requested and consulted with counsel, held to violate Fifth Amendment protections.

SUMMARY

A prison escapee who was accused of committing murder in Mississippi was arrested and held in a jail in California. Two federal law enforcement agents came to the jail on a Friday to interview the accused. The agents read the Miranda warnings to the accused, who answered some questions but then ceased to answer, saying, "Come back Monday when I have a lawyer." The agents honored his request and ceased interrogation. An appointed attorney subsequently communicated with the accused on two or three occasions and advised the accused not to speak to anyone else about any charges against him. On the Monday after the interview, a deputy county sheriff from Mississippi came to the jail to question the accused. According to the accused's subsequent testimony, his jailers told him that he could not refuse to talk to the deputy sheriff. The deputy sheriff advised the accused of his Miranda rights, and the accused refused to sign a formal waiver of those rights. The accused then made a confession without counsel present. At trial in the Circuit Court of Lowndes County, Mississippi, the accused's motion to suppress the confession was denied, and the accused was convicted and sentenced to death. The Supreme Court of Mississippi, affirming on appeal, said that the accused's right to counsel under the Federal Constitution's Fifth Amendment had been satisfied because the requirement of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880—under which an accused who invokes the right to counsel while undergoing custodial interrogation is not subject to further interrogation until counsel

Briefs of Counsel, p 1227, infra.

has been "made available" to the accused—had been met when the accused was provided with an attorney (551 So 2d 77).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Kennedy, J., joined by White, Marshall, Blackmun, Stevens, and O'Connor, JJ., it was held that (1) in a custodial interrogation where the accused requests counsel, interrogation must cease when counsel is requested, and police officials may not reinitiate interrogation without counsel present, regardless of whether the accused has consulted with counsel; (2) the Edwards v Arizona requirement refers to more than an opportunity to consult with an attorney outside the interrogation room, and the protection afforded by the Edwards v Arizona rule as to the Fifth Amendment privilege against self-incrimination is not terminated or suspended once counsel has consulted with the accused; and (3) under the circumstances, the accused's confession to the deputy sheriff was taken in violation of the Edwards v Arizona protections of the accused's Fifth Amendment rights—the accused not having validly waived such protections —and the confession was not admissible against the accused at trial.

Scalia, J., joined by Rehnquist, Ch. J., dissenting, expressed the view that (1) there was no justification for creating an irrebuttable presumption that a criminal suspect, after invoking the Miranda right to counsel, can never validly waive that right during any police-initiated encounter, even after the suspect has been provided multiple Miranda warnings and has actually consulted with counsel; and (2) the exclusionary rule of Edwards v Arizona should cease to apply after the suspect's first consultation with counsel.

Souter, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21A Am Jur 2d, Criminal Law §§ 796, 797; 29 Am Jur 2d, Evidence §§ 555, 556, 614

9 Federal Procedure, L Ed, Criminal Procedure § 22:877; 12A Federal Procedure, L Ed, Evidence § 33:657

7 Federal Procedural Forms, L Ed, Criminal Procedure §§ 20:552, 20:556

8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Forms 241, 244-246

19 Am Jur Proof of Facts 1, Waiver of Rights Under the Miranda Decision; 23 Am Jur Proof of Facts 2d 713, Custodial Interrogation under Miranda v Arizona; 42 Am Jur Proof of Facts 2d 617, Invalidity of Suspect's Waiver of Miranda Rights

5 Am Jur Trials 331, Excluding Illegally Obtained Evidence

USCS, Constitution, Amendment 5

US L Ed Digest, Criminal Law §§ 46.4, 46.7; Evidence § 685; Witnesses §§ 88.5, 94.5

Index to Annotations, Attorney or Assistance of Attorney; Confessions and Admissions; Custodial Interrogation; Miranda Warnings; Police and Law Enforcement Officers; Self-Incrimination

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views as to what constitutes valid waiver of accused's federal constitutional right to counsel. 101 L Ed 2d 1017.

Requirement, under Federal Constitution, that law enforcement officers' custodial interrogation of suspect cease after suspect requests assistance of counsel—Supreme Court cases. 83 L Ed 2d 1087.

The progeny of Miranda v Arizona in the Supreme Court. 46 L Ed 2d 903.

Accused's right to counsel under the Federal Constitution. 93 L Ed 137, 2 L Ed 2d 1644, 9 L Ed 2d 1260, 18 L Ed 2d 1420.

Necessity that Miranda warnings include express reference to right to have attorney present during interrogation. 77 ALR Fed 123.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Criminal Law § 46.4; Witnesses § 88.5 — self-incrimination — custodial interrogation — request for counsel — presence of counsel

1. The custodial interrogation of an accused must cease when the accused requests counsel, and where there has been such a request, police officials may not reinitiate the interrogation without counsel present, regardless of whether the accused has consulted with counsel; the requirement of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880—under which an accused who invokes the right to counsel while undergoing custodial interrogation is not subject to further interrogation until counsel has been "made available" to the accused—refers to more than an opportunity to consult with an attorney outside the interrogation room, and the protection afforded by the Edwards v Arizona rule as to the accused's privilege against self-incrimination under the Federal Constitution's Fifth Amendment is not terminated or suspended once counsel has consulted with the accused. (Scalia, J., and Rehnquist, Ch. J., dissented from this holding.)

Criminal Law § 46.7; Witnesses § 94.5 — self-incrimination — custodial interrogation — right to counsel — waiver

2. The rule of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880—under which an accused who invokes the right to counsel while undergoing custodial interrogation is not subject to further interrogation until counsel has been "made available" to the accused—does not foreclose a waiver by the accused, after counsel has been requested, of protections afforded by the Edwards v Arizona rule as to the accused's privilege against self-incrimination under the Federal Constitution's Fifth Amendment, provided that the accused has initiated the conversation or discussions with the authorities.

Criminal Law § 46.7; Evidence § 685; Witnesses § 94.5 — self-incrimination — custodial interrogation — waiver of protections — presence of counsel — admissibility of confession

3. An accused's confession to a deputy county sheriff is taken in violation of the protections afforded by the rule of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880, as to the accused's privilege against self-incrimination under the Federal Constitution's Fifth Amendment—the accused not having validly waived such protections—and the confession is not admissible against the accused at trial, where (1) the accused was subjected to custodial interrogation in jail by federal law enforcement officials; (2) the interrogation ended when the accused requested a lawyer; (3) the accused subsequently communicated with appointed counsel two or three times; (4) interrogation was reinitiated by the deputy sheriff after the accused was told by his jailers that he could not refuse to talk to the deputy sheriff; (5) the deputy sheriff advised the accused of his Miranda rights, and the accused refused to sign a formal waiver of those rights; and (6) the accused made his confession without counsel present. (Scalia, J., and Rehnquist, Ch. J., dissented from this holding.)

MINNICK v MISSISSIPPI

(1990) 498 US 146, 112 L Ed 2d 489, 111 S Ct 486

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Minnick was arrested on a Mississippi warrant for capital murder. An interrogation by federal law enforcement officials ended when he requested a lawyer, and he subsequently communicated with appointed counsel two or three times. Interrogation was reinitiated by a county deputy sheriff after Minnick was told that he could not refuse to talk to him, and Minnick confessed. The motion to suppress the confession was denied, and he was convicted and sentenced to death. The State Supreme Court rejected his argument that the confession was taken in violation of, inter alia, his Fifth Amendment right to counsel, reasoning that the rule of Edwards v Arizona, 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880—that once an accused requests counsel, officials may not reinitiate questioning "until counsel has been made available" to him—did not apply, since counsel had been made available.

Held: When counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney. In context, the requirement that counsel be "made available" to the accused refers not to the opportunity to consult with an attorney outside the interrogation room, but to the right to have the attorney present during custodial interrogation. This rule is appropriate and necessary, since a single consultation with an attorney does not remove the suspect from persistent attempts by officials to persuade him to waive his rights and from the coercive pressures that accompany custody and may increase as it is prolonged. The proposed exception is inconsistent with Edwards' purpose to protect a suspect's right to have counsel present at custodial interrogation and with Miranda v Arizona, 384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974, where the theory that the opportunity to consult with one's attorney would substantially counteract the compulsion created by custodial interrogation was specifically rejected. It also would undermine the advantages flowing from Edwards' clear and unequivocal character. Since, under respondent's formulation of the rule, Edwards' protection could be reinstated by a subsequent request for counsel, it could pass in and out of existence multiple times, a vagary that would spread confusion through the justice system and lead to a loss of respect for the underlying constitutional principle. And such an exception would leave uncertain the sort of consultation required to displace Edwards. In addition, allowing a suspect whose counsel is prompt to lose Edwards' protection while one whose counsel is dilatory would not would distort the proper conception of an attorney's duty to his client and set a course at odds with what ought to be effective representation. Since Minnick's interrogation was initiated by the police in a formal interview which he was compelled to attend, after Minnick had previously made a specific request for counsel, it was impermissible.

551 So 2d 77, reversed and remanded.

Kennedy, J., delivered the opinion of the Court, in which White, Marshall, Blackmun, Stevens, and O'Connor, JJ., joined. Scalia, J., filed a dissenting opinion, in which Rehnquist, C.J., joined. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Floyd Abrams argued the cause for petitioner.
Marvin L. White, Jr. argued the cause for respondent.
Briefs of Counsel, p 1227, infra.

OPINION OF THE COURT

Justice **Kennedy** delivered the opinion of the Court.

[1] To protect the privilege against self-incrimination guaranteed by the Fifth Amendment, we have held that the police must terminate interrogation of an accused in custody if the accused requests the assistance of counsel. Miranda v Arizona, 384 US 436, 474, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974 (1966). We reinforced the protections of Miranda in Edwards v Arizona, 451 US 477, 484-485, 68 L Ed 2d 378, 101 S Ct 1880 (1981), which held that once the accused requests counsel, officials may not reinitiate questioning "until counsel has been made available" to him. The issue in the case before us is whether Edwards' protection ceases once the suspect has consulted with an attorney.

Petitioner Robert Minnick and fellow prisoner James Dyess escaped from a county jail in Mississippi and, a day later, broke into a mobile home in search of weapons. In the course of the burglary they were interrupted by the arrival of the trailer's owner, Ellis Thomas, accompanied by Lamar Lafferty and Lafferty's infant son. Dyess and Minnick used the stolen weapons to kill Thomas and the senior Lafferty. Minnick's story is that Dyess murdered one victim and forced Minnick to shoot the other. Before the escapees could get away, two young women arrived at the mobile home. They were held at gunpoint, then bound hand and foot. Dyess and Minnick fled in Thomas' truck, abandoning the vehicle in New Orleans. The fugitives continued to Mexico, where they fought, and Minnick then proceeded alone to California. Minnick was arrested in Lemon Grove, California, on a Mississippi warrant, some four months after the murders.

The confession at issue here resulted from the last interrogation of Minnick while he was held in the San Diego jail, but we first recount the events which preceded it. Minnick was arrested on Friday, August 22, 1986. Petitioner testified that he was mistreated by local police during and after the arrest. The day following the arrest, Saturday, two Federal Bureau of Investigation (FBI) agents came to the jail to interview him. Petitioner testified that he refused to go to the interview, but was told he would "have to go down or else." App 45. The FBI report indicates that the agents read petitioner his Miranda warnings, and that he acknowledged he understood his rights. He refused to sign a rights waiver form, however, and said he would not answer "very many" questions. Minnick told the agents about the jailbreak and the flight, and described how Dyess threatened and beat him. Early in the interview, he sobbed "[i]t was my life or theirs," but otherwise he hesitated to tell what happened at the trailer. The agents reminded him he did not have to answer questions without a lawyer present. According to the report, "Minnick stated 'Come back Monday when I have a lawyer,'

and stated that he would make a

more complete statement then with his lawyer present." App 16. The FBI interview ended.

After the FBI interview, an appointed attorney met with petitioner. Petitioner spoke with the lawyer on two or three occasions, though it is not clear from the record whether all of these conferences were in person.

On Monday, August 25, Deputy Sheriff J. C. Denham of Clarke County, Mississippi, came to the San Diego jail to question Minnick. Minnick testified that his jailers again told him he would "have to talk" to Denham and that he "could not refuse." Id., at 45. Denham advised petitioner of his rights, and petitioner again declined to sign a rights waiver form. Petitioner told Denham about the escape and then proceeded to describe the events at the mobile home. According to petitioner, Dyess jumped out of the mobile home and shot the first of the two victims, once in the back with a shotgun and once in the head with a pistol. Dyess then handed the pistol to petitioner and ordered him to shoot the other victim, holding the shotgun on petitioner until he did so. Petitioner also said that when the two girls arrived, he talked Dyess out of raping or otherwise hurting them.

Minnick was tried for murder in Mississippi. He moved to suppress all statements given to the FBI or other police officers, including Denham. The trial court denied the motion with respect to petitioner's statements to Denham, but suppressed his other statements. Petitioner was convicted on two counts of capital murder and sentenced to death.

On appeal, petitioner argued that the confession to Denham was taken in violation of his rights to counsel under the Fifth and Sixth Amendments. The Mississippi Supreme Court rejected the claims. With respect to the Fifth Amendment aspect of the case, the court found "the Edwards bright-line rule as to initiation" inapplicable. 551 So 2d 77, 83 (1988). Relying on language in Edwards indicating that the bar on interrogating the accused after a request for counsel

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applies " 'until counsel has been made available to him,' " ibid., quoting Edwards v Arizona, supra, at 484-485, 68 L Ed 2d 378, 101 S Ct 1880, the court concluded that "[s]ince counsel was made available to Minnick, his Fifth Amendment right to counsel was satisfied." 551 So 2d, at 83. The court also rejected the Sixth Amendment claim, finding that petitioner waived his Sixth Amendment right to counsel when he spoke with Denham. Id., at 83-85. We granted certiorari, 495 US 903, 109 L Ed 2d 285, 110 S Ct 1921 (1990), and, without reaching any Sixth Amendment implications in the case, we decide that the Fifth Amendment protection of Edwards is not terminated or suspended by consultation with counsel.

In Miranda v Arizona, supra, at 474, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974, we indicated that once an individual in custody invokes his right to counsel, interrogation "must cease until an attorney is present"; at that point, "the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning." Edwards gave force to these admonitions, finding it "inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel." 451 US, at 485, 68 L Ed 2d 378, 101 S Ct 1880. We held that "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." Id., at 484, 68 L Ed 2d 378, 101 S Ct 1880. Further, an accused who requests an attorney, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Id., at 484-485, 68 L Ed 2d 378, 101 S Ct 1880.

Edwards is "designed to prevent police from badgering a defendant into waiving his previously asserted Miranda rights." Michigan v Harvey, 494 US 344, 350, 108 L Ed 2d 293, 110 S Ct 1176 (1990).

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See also Smith v Illinois, 469 US 91, 98, 83 L Ed 2d 488, 105 S Ct 490 (1984). The rule ensures that any statement made in subsequent interrogation is not the result of coercive pressures. Edwards conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness, and implements the protections of Miranda in practical and straight-forward terms.

The merit of the Edwards decision lies in the clarity of its command and the certainty of its application. We have confirmed that the Edwards rule provides " 'clear and unequivocal' guidelines to the law enforcement profession." Arizona v Roberson, 486 US 675, 682, 100 L Ed 2d 704, 108 S Ct 2093 (1988). Cf. Moran v Burbine, 475 US 412, 425-426, 89 L Ed 2d 410, 106 S Ct 1135 (1986). Even before Edwards, we noted that Miranda's "relatively rigid requirement that interrogation must cease upon the accused's request for an attorney . . . has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible. This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in Miranda imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative evidence even though the confession might be voluntary under traditional Fifth Amendment analysis." Fare v Michael C., 442 US 707, 718, 61 L Ed 2d 197, 99 S Ct 2560 (1979). This pre-Edwards explanation applies as well to Edwards and its progeny. Arizona v Roberson, supra, at 681-682, 100 L Ed 2d 704, 108 S Ct 2093.

The Mississippi Supreme Court relied on our statement in Edwards that an accused who invokes his right to counsel "is not subject to further interrogation by the authorities until counsel has been made available to him . . . ." 451 US, at 484-485, 68 L Ed 2d 378, 101 S Ct 1880. We do not interpret this language to mean, as the Mississippi court thought, that the protection of Edwards terminates once counsel has consulted with the suspect. In

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context, the requirement that counsel be "made available" to the accused refers to more than an opportunity to consult with an attorney outside the interrogation room.

In Edwards, we focused on Miranda's instruction that when the accused invokes his right to counsel, "the interrogation must cease until an attorney is *present,"* 384 US, at 474, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974 (emphasis added), agreeing with Edwards' contention that he had not waived his right "to have counsel *present* during custodial interrogation." 451 US, at 482, 68 L Ed 2d 378, 101 S Ct 1880 (emphasis added). In the sentence preceding the language quoted by the Mississippi Supreme Court, we referred to the "right to have counsel *present* during custodial interrogation," and in the sentence following, we again quoted the phrase " 'interrogation must cease until an attorney is *present'* " from Miranda. 451 US, at 484-485, 68 L Ed 2d 378, 101 S Ct 1880 (emphasis added). The full sentence relied on by the Mississippi Supreme Court, moreover, says: "We further hold that an accused, such as Edwards, *having expressed his desire to deal with the police only through counsel,* is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Ibid. (emphasis added).

Our emphasis on counsel's *presence* at interrogation is not unique to Edwards. It derives from Miranda, where we said that in the cases before us "[t]he presence of counsel . . . would be the adequate protective device necessary to make the process of police interrogation conform to the dictates of the [Fifth Amendment] privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion." 384 US, at 466, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974. See Fare v Michael C., supra, at 719, 61 L Ed 2d 197, 99 S Ct 2560. Our cases following Edwards have interpreted the decision to mean that the authorities may not initiate questioning of the accused in counsel's absence. Writing for a plurality of the Court, for instance, then-Justice Rehnquist described the holding of

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Edwards to be "that subsequent incriminating statements made *without [Edwards'] attorney present* violated the rights secured to the defendant by the Fifth and Fourteenth Amendments to the United States Constitution." Oregon v Bradshaw, 462 US 1039, 1043, 77 L Ed 2d 405, 103 S Ct 2830 (1983) (emphasis added). See also Arizona v Roberson, supra, at 680, 100 L Ed 2d 704, 108 S Ct 2093 ("The rule of the Edwards case came as a corollary to Miranda's admonition that '[i]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present' "); Shea v Louisiana, 470 US 51, 52, 84 L Ed 2d 38, 105 S Ct 1065 (1985) ("In Edwards v Arizona, . . . this Court ruled that a criminal defendant's rights under the Fifth and Fourteenth Amendments were violated by the use of his confession obtained by police-instigated interrogation—without counsel present—after he requested an attorney"). These descriptions of Edwards' holding are consistent with our statement that "[p]reserving the integrity of an accused's choice to communicate with police only through counsel is the essence of Edwards and its progeny." Patterson v Illinois, 487 US 285, 291, 101 L Ed 2d 261, 108 S Ct 2389 (1988). In our view, a fair reading of Edwards and subsequent cases demonstrates that we have interpreted the rule to bar police-initiated interrogation unless the accused has counsel with him at the time of questioning. Whatever the ambiguities of our earlier cases on this point, we now hold that when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney.

We consider our ruling to be an appropriate and necessary application of the Edwards rule. A single consultation with an attorney does not remove the suspect from persistent attempts by officials to persuade him to waive his rights, or from the coercive pressures that accompany custody and that may increase as custody is prolonged. The case before us well illustrates the pressures, and abuses, that may be concimitants of custody. Petitioner testified that though he resisted, he was required to submit to both the FBI and the

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Denham interviews. In the latter instance, the compulsion to submit to interrogation followed petitioner's unequivocal request during the FBI interview that questioning cease until counsel was present. The case illustrates also that consultation is not always effective in instructing the suspect of his rights. One plausible interpretation of the record is that petitioner thought he could keep his admissions out of evidence by refusing to sign a formal waiver of rights. If the authorities had complied with Minnick's request to have counsel present during interrogation, the attorney could have corrected Minnick's misunderstanding, or indeed counseled him that he need not make a statement at all. We decline to remove protection from police-initiated questioning based on isolated consultations with counsel who is absent when the interrogation resumes.

The exception to Edwards here proposed is inconsistent with Edwards' purpose to protect the suspect's right to have counsel present at custodial interrogation. It is inconsistent as well with Miranda, where we specifically rejected respondent's theory that the opportunity to consult with one's attorney would substantially counteract the compulsion created by custodial interrogation. We noted in Miranda that "[e]ven preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Thus the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires." 384 US, at 470, 16 L Ed 2d 694, 86 S Ct 1602 (citation omitted).

The exception proposed, furthermore, would undermine the advantages flowing from Edwards' "clear and unequivocal" character. Respondent concedes that even after consultation with counsel, a second request for counsel should reinstate the Edwards protection. We are invited by this formulation to adopt a regime in which Edwards' protection could pass in and out of existence multiple times prior to arraignment,

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at which

point the same protection might reattach by virtue of our Sixth Amendment jurisprudence, see Michigan v jackson, 475 US 625, 89 L Ed 2d 631, 106 S Ct 1404 (1986). Vagaries of this sort spread confusion through the justice system and lead to a consequent loss of respect for the underlying constitutional principle.

In addition, adopting the rule proposed would leave far from certain the sort of consultation required to displace Edwards. Consultation is not a precise concept, for it may encompass variations from a telephone call to say that the attorney is in route, to a hurried interchange between the attorney and client in a detention facility corridor, to a lengthy in-person conference in which the attorney gives full and adequate advice respecting all matters that might be covered in further interrogations. And even with the necessary scope of consultation settled, the officials in charge of the case would have to confirm the occurrence and, possibly, the extent of consultation to determine whether further interrogation is permissible. The necessary inquiries could interfere with the attorney-client privilege.

Added to these difficulties in definition and application of the proposed rule is our concern over its consequence that the suspect whose counsel is prompt would lose the protection of Edwards, while the one whose counsel is dilatory would not. There is more than irony to this result. There is a strong possibility that it would distort the proper conception of the attorney's duty to the client and set us on a course at odds with what ought to be effective representation.

Both waiver of rights and admission of guilt are consistent with the affirmation of individual responsibility that is a principle of the criminal justice system. It does not detract from this principle, however, to insist that neither admissions nor waivers are effective unless there are both particular and systemic assurances that the coercive pressures of custody were not the inducing cause. The Edwards rule sets forth a specific standard to fulfill these purposes, and we have declined

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to confine it in other instances. See Arizona v Roberson, 486 US 675, 100 L Ed 2d 704, 108 S Ct 2093 (1988). It would detract from the efficacy of the rule to remove its protections based on consultation with counsel.

[2, 3] Edwards does not foreclose finding a waiver of Fifth Amendment protections after counsel has been requested, provided the accused has initiated the conversation or discussions with the authorities; but that is not the case before us. There can be no doubt that the interrogation in question was initiated by the police; it was a formal interview which petitioner was compelled to attend. Since petitioner made a specific request for counsel before the interview, the police-initiated interrogation was impermissible. Petitioner's statement to Denham was not admissible at trial.

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice **Scalia,** with whom The **Chief Justice** joins, dissenting.

The Court today establishes an irrebuttable presumption that a criminal suspect, after invoking his Miranda right to counsel, can *never* validly waive that right during any police-initiated encounter, even after the suspect has been provided multiple Miranda warnings and has actually consulted his attorney. This holding builds on foundations already established in Edwards v Arizona, 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880 (1981), but "the rule of Edwards is our rule, not a constitutional command; and it is our obligation to justify its expansion." Arizona v Roberson, 486 US 675, 688, 100 L Ed 2d 704, 108 S Ct 2093 (1988) (Kennedy, J., dissenting). Because I see no justification for applying the Edwards irrebuttable presumption when a criminal suspect has actually consulted with his attorney, I respectfully dissent.

I

Some recapitulation of pertinent facts is in order, given the Court's contention that "[t]he case before us well illustrates the pressures, and abuses, that may be concomitants of custody." Ante, at 153, 112 L Ed 2d, at 498. It is undisputed that the FBI agents who first interviewed Minnick on Saturday, August 23, 1986, advised him of his Miranda rights before any questioning began. Although he refused to sign a waiver form, he agreed to talk to the agents, and described his escape from prison in Mississippi and the ensuing events. When he came to what happened at the trailer, however, Minnick hesitated. The FBI agents then reminded him that he did not have to answer questions without a lawyer present. Minnick indicated that he would finish his account on Monday, when he had a lawyer, and the FBI agents terminated the interview forthwith.

Minnick was then provided with an attorney, with whom he consulted several times over the weekend. As Minnick testified at a subsequent suppression hearing:

> "I talked to [my attorney] two different times and—it might have been three different times . . . . He told me that first day that he was my lawyer and that he was appointed to me and to not to talk to nobody and not tell nobody nothing and to not sign no waivers and not sign no extradition papers or sign anything and that he was going to get a court order to have any of the police—I advised him of the FBI talking to me and he advised me not to tell anybody anything that he was going to get a court order drawn up to restrict anybody talking to me outside of the San Diego Police Department." App 46-47.

On Monday morning, Minnick was interviewed by Deputy Sheriff J. C. Denham, who had come to San Diego from Mississippi. Before the interview, Denham reminded Minnick of his Miranda rights. Minnick again refused to sign a

waiver form, but he did talk with Denham and did not ask for his attorney. As Minnick recalled at the hearing, he and Denham

> "went through several different conversations about—first, about how everybody was back in the

> county jail and what everybody was doing, had he heard from Mama and had he went and talked to Mama and had he seen my brother, Tracy, and several different other questions pertaining to such things as that. And, we went off into how the escape went down at the county jail. . . ." App 50.

Minnick then proceeded to describe his participation in the double murder at the trailer.

Minnick was later extradited and tried for murder in Mississippi. Before trial, he moved to suppress the satements he had given the FBI agents and Denham in the San Diego jail. The trial court granted the motion with respect to the statements made to the FBI agents, but ordered a hearing on the admissibility of the statements made to Denham. After receiving testimony from both Minnick and Denham, the court concluded that Minnick's confession had been "freely and voluntarily given from the evidence beyond a reasonable doubt," id., at 25, and allowed Denham to describe Minnick's confession to the jury.

The Court today reverses the trial court's conclusion. It holds that, because Minnick had asked for counsel during the interview with the FBI agents, he could not—as a matter of law—validly waive the right to have counsel present during the conversation initiated by Denham. That Minnick's original request to see an attorney had been honored, that Minnick had consulted with his attorney on several occasions, and that the attorney had specifically warned Minnick not to speak to the authorities, are irrelevant. That Minnick was familiar with the criminal justice system in general or Miranda warnings in particular (he had previously been convicted of robbery in Mississippi and assault with a deadly

weapon in California) is also beside the point. The confession must be suppressed, not because it was "compelled," nor even because it was obtained from an individual who could realistically be assumed to be unaware of his rights, but simply because this Court sees fit to prescribe as a "systemic assuranc[e]," ante, at 155, 112 L Ed 2d, at 499, that a person in custody who has once asked for counsel cannot thereafter be approached by the police unless counsel is present. Of course the Constitution's proscription of compelled testimony does not remotely authorize this incursion upon state practices; and even our recent precedents are not a valid excuse.

II

In Miranda v Arizona, 384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974 (1966), this Court declared that a criminal suspect has a right to have counsel present during custodial interrogation, as a prophylactic assurance that the "inherently compelling pressures," id., at 467, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974, of such interrogation will not violate the Fifth Amendment. But Miranda did not hold that these "inherently compelling pressures" precluded a suspect from waiving his right to have counsel present. On the contrary, the opinion recognized that a State could establish that the suspect "knowingly and intelligently waived . . . his right to retained or appointed counsel." Id., at 475, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974. For this purpose, the Court expressly adopted the "high standar[d] of proof for the waiver of constitutional rights," ibid., set forth in Johnson v Zerbst, 304 US 458, 82 L Ed 1461, 58 S Ct 1019 (1938).

The Zerbst waiver standard, and the means of applying it, are familiar: Waiver is "an intentional relinquishment or abandonment of a known right or privilege," id., at 464, 82 L Ed 1461, 58 S Ct 1019; and whether such a relinquishment or abandonment has occurred depends "in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused," ibid. We have applied the Zerbst approach in many contexts where a State bears the burden of showing a waiver of constitutional criminal

[498 US 160]

procedural rights. See, e.g., Faretta v California, 422 US 806, 835, 45 L Ed 2d 562, 95 S Ct 2525 (1975) (right to the assistance of counsel at trial); Brookhart v Janis, 384 US 1, 4, 16 L Ed 2d 314, 86 S Ct 1245 (1966) (right to confront adverse witnesses); Adams v United States ex rel. McCann, 317 US 269, 275-280, 87 L Ed 2d 268, 63 S Ct 236, 143 ALR 435 (1942) (right to trial by jury).

Notwithstanding our acknowledgment that Miranda rights are "not themselves rights protected by the Constitution but . . . instead measures to insure that the right against compulsory self-incrimination [is] protected," Michigan v Tucker, 417 US 433, 444, 41 L Ed 2d 182, 94 S Ct 2357 (1974), we have adhered to the principle that nothing less than the Zerbst standard for the waiver of constitutional rights applies to the waiver of Miranda rights. Until Edwards, however, we refrained from imposing on the States a *higher* standard for the waiver of Miranda rights. For example, in Michigan v Mosley, 423 US 96, 46 L Ed 2d 313, 96 S Ct 321 (1975), we rejected a proposed irrebuttable presumption that a criminal suspect, after invoking the Miranda right to remain silent, could not validly waive the right during any subsequent questioning by the police. In North Carolina v Butler, 441 US 369, 60 L Ed 2d 286, 99 S Ct 1755 (1979), we rejected a proposed rule that waivers of Miranda rights must be deemed involuntary absent an explicit assertion of waiver by the suspect. And in Fare v Michael C., 442 US 707, 723-727, 61 L Ed 2d 197, 99 S Ct 2560 (1979), we declined to hold that waivers of Miranda rights by juveniles are per se involuntary.

Edwards, however, broke with this approach, holding that a defendant's waiver of his Miranda right to counsel, made in the course of a police-initiated encounter after he had requested counsel but before counsel had been provided, was per se involuntary. The case stands as a solitary exception to our waiver jurisprudence. It does, to be sure, have the desirable consequences described in today's opinion. In the narrow context in which it applies, it provides 100% assurance against confessions that are "the result of coercive pressures," ante, at 151, 112 L Ed 2d, at 496; it " 'prevent[s] police from badgering a

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defendant,' " ante, at 150, 112 L Ed 2d, at 496 (quoting Michigan v Harvey, 494 US 344, 350, 108 L Ed 2d 293, 110 S Ct 1176 (1990)); it "conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness," ante, at 151, 112 L Ed 2d, at 496; and it provides " ' "clear and unequivocal" guidelines to the law enforcement profession,'" ibid. (quoting Arizona v Roberson, 486 US, at 682, 100 L Ed 2d 704, 108 S Ct 2093). But so would a rule that simply excludes all confessions by all persons in police custody. The value of any prophylactic rule (assuming the authority to adopt a prophylactic rule) must be assessed not only on the basis of what is gained, but also on the basis of what is lost. In all other contexts we have thought the above-described consequences of abandoning Zerbst outweighed by "'the need for police questioning as a tool for effective enforcement of criminal laws,'" Moran v. Burbine, 475 US 412, 426, 89 L Ed 2d 410, 106 S Ct 1135 (1986). "Admissions of guilt," we have said, "are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." Ibid. (citation omitted).

III

In this case, of course, we have not been called upon to reconsider Edwards, but simply to determine whether its irrebuttable presumption should continue after a suspect has actually consulted with his attorney. Whatever justifications might support Edwards are even less convincing in this context.

Most of the Court's discussion of Edwards—which stresses repeatedly, in various formulations, the case's emphasis upon the "right 'to have counsel *present* during custodial interrogation,'" ante, at 152, 112 L Ed 2d, at 497, quoting 451 US, at 482, 68 L Ed 2d 378, 101 S Ct 1880 (emphasis added by the Court)—is beside the point. The existence and the importance of the Miranda-created right "to have counsel *present*" are unquestioned here. What is questioned is why a State should not be given the opportunity to prove (under Zerbst) that the right was *voluntarily waived* by a suspect who, after having been read his Miranda rights twice and

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having consulted with counsel at least twice, chose to speak to a police officer (and to admit his involvement in two murders) without counsel present.

Edwards did not assert the principle that no waiver of the Miranda right "to have counsel *present*" is possible. It simply adopted the presumption that no waiver is *voluntary* in certain circumstances, and the issue before us today is how broadly those circumstances are to be defined. They should not, in my view, extend beyond the circumstances present in Edwards itself—where the suspect in custody asked to consult an attorney and was interrogated before that attorney had ever been provided. In those circumstances, the Edwards rule rests upon an assumption similar to that of Miranda itself: that when a suspect in police custody is first questioned he is likely to be ignorant of his rights and to feel isolated in a hostile environment. This likelihood is thought to justify special protection against unknowing or coerced waiver of rights. After a suspect has seen his request for an attorney honored, however, and has actually spoken with that attorney, the probabilities change. The suspect then knows that he has an advocate on his side, and that the police will permit him to consult that advocate. He almost certainly also has a heightened awareness (above what the Miranda warning itself will provide) of his right to remain silent—since at the earliest opportunity "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to the police under any circumstances." Watts v Indiana, 338 US 49, 59, 93 L Ed 1801, 69 S Ct 1347 (1949) (opinion of Jackson, J.).

Under these circumstances, an irrebuttable presumption that any police-prompted confession is the result of ignorance of rights, or of coercion, has no genuine basis in fact. After the first consultation, therefore, the Edwards exclusionary rule should cease to apply. Does this mean, as the Court implies, that the police will thereafter have license to "badger" the suspect? Only if all one means by "badger" is asking, without such insistence or frequency as would constitute coercion,

whether he would like to reconsider his decision not to confess. Nothing in the Constitution (the only basis for our intervention here) prohibits such inquiry, which may often produce the desirable result of a voluntary confession. If and when postconsultation police inquiry becomes so protracted or threatening as to constitute coercion, the Zerbst standard will afford the needed protection.

One should not underestimate the extent to which the Court's expansion of Edwards constricts law enforcement. Today's ruling, that the invocation of a right to counsel permanently prevents a police-initiated waiver, makes it largely impossible for the police to urge a prisoner who has initially declined to confess to change his mind—or indeed, even to ask whether he has changed his mind. Many persons in custody will invoke the Miranda right to counsel during the first interrogation, so that the permanent prohibition will attach at once. Those who do not do so will almost certainly request or obtain counsel at arraignment. We have held that a general request for counsel, after the Sixth Amendment right has attached, also triggers the Edwards prohibition of police-solicited confessions, see Michigan v Jackson, 475 US 625, 89 L Ed 2d 631, 106 S Ct 1404 (1986), and I presume that the perpetuality of prohibition announced in today's opinion applies in that context as well. "Perpetuality" is not too strong a term, since, although the Court rejects one logical moment at which the Edwards presumption might end, it suggests no alternative. In this case Minnick was reapproached by the police three days after he requested counsel, but the result would presumably be the same if it had been three months, or three years, or even three decades. This perpetual irrebuttable presumption will apply, I might add, not merely to interrogations involving the original crime, but to those involving other subjects as well. See Arizona v Roberson, 486 US 675, 100 L Ed 2d 704, 108 S Ct 2093 (1988).

Besides repeating the uncontroverted proposition that the suspect has a "right to have counsel *present,*" the Court stresses the clarity and simplicity that are achieved by today's

holding. Clear and simple rules are desirable, but only in pursuance of authority that we possess. We are authorized by the Fifth Amendment to exclude confessions that are "compelled," which we have interpreted to include confessions that the police obtain from a suspect in custody without a knowing and voluntary waiver of his right to remain silent. Undoubtedly some bright-line rules can be adopted to implement that principle, marking out the situations in which knowledge or voluntariness cannot possibly be established—for example, a rule excluding confessions obtained after five hours of continuous interrogation. But a rule excluding all confessions that follow upon even the slightest police inquiry cannot conceivably be justified on this basis. It does not rest upon a reasonable prediction that all such confessions, or even most such confessions, will be unaccompanied by a knowing and voluntary waiver.

It can be argued that the same is true of the category of confessions excluded by the Edwards rule itself. I think that is so, but, as I have discussed above, the presumption of involuntariness is at least more plausible for that category. There is, in any event, a clear and rational line between that category and the present one, and I see nothing to be said for expanding upon a past mistake. Drawing a distinction between police-initiated inquiry before consultation with counsel and police-initiated inquiry after consultation with counsel is assuredly more reasonable than other distinctions Edwards has already led us into—such as the distinction between police-initiated inquiry after assertion of the Miranda right to remain silent, and police-initiated inquiry after assertion of the Miranda right to counsel, see Kamisar, The Edwards and Bradshaw Cases: The Court Giveth and the Court Taketh Away, in 5 The Supreme Court: Trends and Developments 153, 157 (J. Choper, Y. Kamisar, & L. Tribe eds 1984) ("[E]ither Mosley was wrongly decided or Edwards was"); or the distinction between what is needed to prove waiver of the

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Miranda right to have counsel present and what is needed to prove waiver of rights found in the Constitution.

The rest of the Court's arguments can be answered briefly. The suggestion that it will either be impossible or ethically impermissible to determine whether a "consultation" between the suspect and his attorney has occurred is alarmist. Since, as I have described above, the main purpose of the consultation requirement is to eliminate the suspect's feeling of isolation and to assure him the presence of legal assistance, any discussion between him and an attorney whom he asks to contact, or who is provided to him, in connection with his arrest, will suffice. The precise content of the discussion is irrelevant.

As for the "irony" that "the suspect whose counsel is prompt would lose the protection of Edwards, while the one whose counsel is dilatory would not," ante, at 155, 112 L Ed 2d, at 499: There seems to me no irony in applying a special protection only when it is needed. The Edwards rule is premised on an (already tenuous) assumption about the suspect's psychological state, and when the event of consultation renders that assumption invalid the rule should no longer apply. One searching for ironies in the state of our law should consider, first, the irony created by Edwards itself: The suspect in custody who says categorically "I do not wish to discuss this matter" can be asked to change his mind; but if he should say, more tentatively, "I do not think I should discuss this matter without my attorney present" he can no longer be approached. To that there is added, by today's decision, the irony that it will be far harder for the State to establish a knowing and voluntary waiver of Fifth Amendment rights by a prisoner who has already consulted with counsel than by a newly arrested suspect.

Finally, the Court's concern that "Edwards' protection could pass in and out of existence multiple times," ante, at 154, 112 L Ed 2d at 498, does not apply to the resolution of the matter I have proposed.

Edwards would cease to apply, permanently, once consultation with counsel has occurred.

* * *

Today's extension of the Edwards prohibition is the latest stage of prophylaxis built upon prophylaxis, producing a veritable fairyland castle of imagined constitutional restriction upon law enforcement. This newest tower, according to the Court, is needed to avoid "inconsisten[cy] with [the] purpose" of Edwards' prophylactic rule, ante, at 154, 112 L Ed 2d at 498, which was needed to protect Miranda's prophylactic right to have counsel present, which was needed to protect the right against *compelled self-incrimination* found (at last!) in the Constitution.

It seems obvious to me that, even in Edwards itself but surely in today's decision, we have gone far beyond any genuine concern about suspects who do not *know* their right to remain silent, or who have been *coerced* to abandon it. Both holdings are explicable, in my view, only as an effort to protect suspects against what is regarded as their own folly. The sharp-witted criminal would know better than to confess; why should the dull-witted suffer for his lack of mental endowment? Providing him an attorney at every stage where he might be induced or persuaded (though not coerced) to incriminate himself will even the odds. Apart from the fact that this protective enterprise is beyond our authority under the Fifth Amendment or any other provision of the Constitution, it is unwise. The procedural protections of the Constitution protect the guilty as well as the innocent, but it is not their objective to set the guilty free. That some clever criminals may employ those protections to their advantage is poor reason to allow criminals who have not done so to escape justice.

Thus, even if I were to concede that an honest confession is a foolish mistake, I would welcome rather than reject it; a rule that foolish mistakes do not count would leave most offenders

not only unconvicted but undetected. More fundamentally, however, it is wrong, and subtly corrosive of our criminal justice system, to regard an honest confession as a "mistake." While every person is entitled to stand silent, it is more virtuous for the wrongdoer to admit his offense and accept the punishment he deserves. Not only for society, but for the wrongdoer himself, "admissio[n] of guilt . . . , if not coerced, [is] inherently desirable," United States v Washington, 431 US 181, 187, 52 L Ed 2d 238, 97 S Ct 1814 (1977), because it advances the goals of both "justice *and* rehabilitation." Michigan v Tucker, 417 US, at 448, n 23, 41 L Ed 2d 182, 94 S Ct 2357 (emphasis added). A confession is rightly regarded by the Sentencing Guidelines as warranting a reduction of sentence, because it "demonstrates a recognition and affirmative acceptance of personal responsibility for . . . criminal conduct," U.S. Sentencing Commission, Guidelines Manual § 3E1.1 (1988), which is the beginning of reform. We should, then, rejoice at an honest confession, rather than pity the "poor fool" who has made it; and we should regret the attempted retraction of that good act, rather than seek to facilitate and encourage it. To design our laws on premises contrary to these is to abandon belief in either personal responsibility or the moral claim of just government to obedience. Cf. Caplan, Questioning Miranda, 38 Vand L Rev 1417, 1471-1473 (1985). Today's decision is misguided, it seems to me, in so readily exchanging, for marginal, super-Zerbst protection against genuinely compelled testimony, investigators' ability to urge, or even ask, a person in custody to do what is right.

[498 US 168]

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW, Petitioners

v

RING SCREW WORKS, FERNDALE FASTENER DIVISION

498 US 168, 112 L Ed 2d 508, 111 S Ct 498

[No. 89-1166]

Argued October 10, 1990. Decided December 10, 1990.

Decision: Collective bargaining agreements that were silent as to judicial remedies held not to bar parties' recourse to courts under 29 USCS § 185 upon failure of voluntary grievance procedures.

SUMMARY

Two almost identical collective bargaining agreements between a labor union and an employer provided for voluntary grievance procedures, but neither agreement required the parties to submit disputes to binding arbitration. Although silent as to judicial remedies, the agreements prohibited strikes or lockouts until after the exhaustion of the grievance machinery. Two members of the union—one of them bound by one agreement, and the other bound by the other agreement—alleged that they had been discharged by their employer without just cause, in violation of the respective agreements. Both union members invoked the voluntary grievance procedures provided by the agreements, but without success. At the end of the procedures, the employer decided not to call for arbitration and the union decided not to exercise its right to strike. Instead, each union member filed an action in state court for wrongful discharge. The employer filed a petition for removal in both cases on the ground that the actions could have been brought in Federal District Court under § 301 of the Labor Management Relations Act (LMRA) (29 USCS § 185), which provides a federal remedy for breach of a collective bargaining agreement. The cases were removed to a Federal District Court, but the District Court, granting the employer's motions for summary judgment in both cases, held that the union members could not maintain a cause of action under § 301 without alleging that the union breached its duty of fair representation. The United States Court of Appeals for the Sixth Circuit, affirming on appeal, held that the agreements

Briefs of Counsel, p 1228, infra.

brought about an inference that a strike or other job action was the remedy for failure to resolve a grievance absent mutually acceptable arbitration (882 F2d 1081).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Stevens, J., expressing the unanimous view of the court, it was held that the collective bargaining agreements did not bar recourse to the courts under § 301 upon failure of the voluntary grievance procedures, and a strike or lockout was not the exclusive remedy that remained under such circumstances, given that (1) the parties to a collective bargaining agreement may expressly agree to resort to economic warfare rather than to mediation, arbitration, or judicial review, but the LMRA (29 USCS §§ 141 et seq.) does not favor such an agreement, since a strike or lockout is the antithesis of the peaceful methods of dispute resolution envisaged by Congress when it passed the LMRA; and (2) an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than the alleged agreement in question.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

48A Am Jur 2d, Labor and Labor Relations §§ 1840, 1926

23 Federal Procedure, L Ed, Labor and Labor Relations § 52:2028

12 Federal Procedural Forms, L Ed, Labor and Labor Relations §§ 243, 251, 252

16 Am Jur Pl & Pr Forms (Rev), Labor and Labor Relations, Form 153

29 USCS § 185

RIA Employment Coordinator ¶¶ LR-44,565, LR-44,645

US L Ed Digest, Labor §§ 22, 44, 46

Index to Annotations, Collective Bargaining; Grievances; Labor and Employment

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Constitutionality and construction of § 301(a) of Labor Management Relations Act (29 USCS § 185(a)) conferring jurisdiction on Federal District Courts in actions for violation of contract between employer and labor organization. 7 L Ed 2d 959, 16 L Ed 2d 1143.

What circumstances justify employee's failure to exhaust remedies provided in collective bargaining agreement before bringing grievance suit against employer in federal court, under § 301 of Labor Management Relations Act of 1947 (29 USCS § 185). 52 ALR Fed 591.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Labor §§ 22, 44, 46 — collective bargaining agreements — construction — grievances — judicial remedy under LMRA

1a-1d. A collective bargaining agreement which contains a provision prohibiting strikes or lockouts "until all negotiations have failed through the grievance procedure set forth herein," but which is silent as to judicial remedies and does not require the parties to submit disputes to binding arbitration, does not bar recourse to the courts under § 301 of the Labor Management Relations Act (LMRA) (29 USCS § 185) upon failure of the voluntary grievance procedures that are provided by the agreement; under such a collective bargaining agreement, a strike or lockout is not the exclusive remedy that remains if the voluntary mediation process is unsuccessful, given that (1) the parties to a collective bargaining agreement may expressly agree to resort to economic warfare rather than to mediation, arbitration, or judicial review, but the LMRA (29 USCS §§ 141 et seq.) does not favor such an agreement, since a strike or lockout is the antithesis of the peaceful methods of dispute resolution envisaged by Congress when it passed the LMRA, and (2) an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than the alleged agreement in question; thus, under collective bargaining agreements of the type at issue, the judicial remedy under § 301 for breach of a collective bargaining agreement is available to labor union members who allege that they have been discharged by their employer in violation of the agreements, where the union members have unsuccessfully invoked the grievance procedures provided by the agreements, and where, at the end of the procedures, (1) the employer decides not to call for arbitration, and (2) the union decides not to exercise its right to strike.

Evidence § 281; Labor § 22 — presumptions — forum for dispute adjustment

2a, 2b. Under § 301 of the Labor Management Relations Act (LMRA) (29 USCS § 185), as in other areas of the law, there is a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes; however, a presumption favoring access to a judicial forum is overcome whenever the parties have agreed upon a different method for the adjustment of their disputes.

Labor § 22 — collective bargaining agreements — resolution of grievances — policy of statute

3. With respect to § 203(d) of the Labor Management Relations Act (LMRA) (29 USCS § 173(d))—which states that final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement—the reference to "the desirable method for settlement of grievance disputes" refers to the peaceful resolution of such disputes.

SYLLABUS BY REPORTER OF DECISIONS

After petitioner employees were discharged from their jobs, they and petitioner union invoked the grievance procedures in the collective-bargaining agreements between the union and respondent company. Those agreements provide for voluntary grievance procedures, including arbitration, and reserve the parties' respective rights to resort to economic weapons when the procedures fail to resolve a dispute, but are silent as to judicial remedies. Upon failure of the grievance procedures, petitioners filed an action under § 301 of the Labor Management Relations Act, 1947 (LMRA), which provides a judicial remedy for the breach of a collective-bargaining agreement. The District Court granted the company's motion for summary judgment, and the Court of Appeals affirmed, holding that the agreements brought about an inference that a strike or other job action was the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration, such that recourse to the courts under § 301 was barred.

Held: Petitioners may seek a judicial remedy under § 301. While § 301's strong presumption favoring judicial enforcement of collective-bargaining agreements may be overcome whenever the parties expressly agree to a different method for adjustment of their disputes, Congress, in passing the LMRA, envisaged peaceful methods of dispute resolution. Thus, the statute does not favor an agreement to resort to economic warfare rather than to mediation, arbitration, or judicial review. A contract provision reserving the union's right to resort to economic weapons cannot be construed as an agreement to divest the courts of jurisdiction to resolve disputes. Such an agreement would have to be written much more clearly.

882 F2d 1081, reversed and remanded.

Stevens, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

Laurence Gold argued the cause for petitioners.
Terence V. Page argued the cause for respondent.
Briefs of Counsel, p 1228, infra.

OPINION OF THE COURT

[498 US 169]

Justice **Stevens** delivered the opinion of the Court.

[1a] The collective-bargaining agreements between the parties provide for voluntary grievance procedures and reserve the parties' respective rights to resort to economic weapons when the procedures fail to resolve a dispute. The collective-bargaining agreements are silent as to judicial remedies. The question presented is whether, upon failure of the grievance procedures, such contracts should be construed to bar recourse to the courts under § 301 of the Labor Management Relations Act, 1947 (LMRA), 61 Stat 156, 29 USC § 185 [29 USCS § 185]. We granted certiorari to resolve a conflict in the Circuits,[1] 494 US 1026, 108 L Ed 2d 607, 110 S Ct 1469

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[1] Compare Fortune v National Twist Drill & Tool Division, Lear Siegler, Inc. 684 F2d 374 (CA6 1982), and Haynes v United States Pipe and Foundry Co. 362 F2d 414 (CA5

(1990), and we now conclude that the judicial remedy under § 301 is available to petitioners.

I

Two almost identical collective-bargaining agreements (CBA's) between respondent Ring Screw Works (company) and the union[2] prohibit discharges except for "just cause."

Petitioners Groves and Evans contend that they were discharged in violation of this provision.

Both CBA's provide that the parties will make "an earnest effort" to settle every dispute that may arise under the agreement. App 16. Both CBA's also contain a voluntary multistep grievance procedure, but neither includes a requirement that the parties submit disputes to binding arbitration.[3] The CBA's prohibit strikes or lockouts until the grievance machinery has been exhausted. The no-strike clause provides:

> "The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, of production at the Company's plant during the terms of this agreement *until all negotiations have failed through the grievance procedure set forth herein.* Neither will the Company engage in any lockout
>
> until the same grievance procedure has been carried out." Id., at 34 (emphasis added); see id., at 69.[4]

The dispute in this case arose out of the company's decision to discharge petitioners.[5] With the assis-

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1966), with Associated General Contractors of Illinois v Illinois Conference of Teamsters, 486 F2d 972 (CA7 1973); Dickeson v DAW Forest Products Co. 827 F2d 627 (CA9 1987); United Brotherhood of Carpenters & Joiners of America v Hensel Phelps Construction Co. 376 F2d 731 (CA10), cert denied, 389 US 952, 19 L Ed 2d 360, 88 S Ct 333 (1967), and Breish v Ring Screw Works, 397 Mich 586, 248 NW2d 526 (1976).

[2] Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is one of the three petitioners and serves as collective-bargaining agent for the two employee petitioners, Arthur Groves and Bobby J. Evans.

[3] Thus, one CBA provides, in part:
"Section 1. Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:
"Step 1. Between the employee, his steward and the foreman of his department. If a satisfactory settlement is not reached, then
"Step 2. Between the Shop Committee, with or without the employee, and the Company management. If a satisfactory settlement is not reached, then
"Step 3. The Shop Committee and/or the Company may call the local Union president and/or the International representative to arrange a meeting in an attempt to resolve the grievance. If a satisfactory settlement is not reached, then
"Step 4. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only." App 16-17.

[4] One of the CBA's contained the following provision:
"Unresolved grievance (except arbitration decisions) shall be handled as setforth in Article XVI, Section 7." Id., at 53.
The referenced provision is the no-strike clause. There has been no claim at any stage of this litigation that this provision justifies a different interpretation of the two otherwise almost identical CBA's.

[5] The company terminated petitioner Groves for allegedly excessive, unexcused absences and dismissed petitioner Evans for allegedly falsifying company records.

tance of the union, petitioners invoked the grievance procedures, but without success.[6] At the end of the procedures, the company decided not to call for arbitration, and the union decided not to exercise its right to strike.[7] Instead, petitioners filed this action invoking federal jurisdiction under § 301, 29 USC § 185 [29 USCS § 185].

Following the Sixth Circuit's decision in Fortune v National Twist Drill & Tool Division, Lear Siegler, Inc. 684 F2d 374 (1982), the District Court granted the company's motion for summary judgment and the Court of Appeals affirmed. 882 F2d 1081 (1989). The Sixth Circuit explained:

> "We believe that the CBAs in question do bring about an inference that a strike, or other job action, is the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration. Such resolution, by work 'stoppage or other interference' is not a happy solution from a societal standpoint of an industrial dispute, particularly as it relates to the claim of a single employee
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>
>
> that he has been wrongfully discharged. Were we deciding the issue with a clean slate, we might be disposed to adopt the rationale of Dickeson [v DAW Forest Products Co.], 827 F2d 627 [(CA9 1987)]." 882 F2d, at 1086.[8]

II

[2a] Section 301(a) of the LMRA provides a federal remedy for breach of a collective-bargaining agreement.[9] We have squarely held that § 301 authorizes "suits by and against individual employees as well as between unions and employers," including actions against an employer for wrongful discharge. Hines v Anchor Motor Freight, Inc. 424 US 554, 562, 47 L Ed 2d 231, 96 S Ct

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[6] There is no dispute that the grievance procedures were properly followed and that the union fairly represented petitioners.

[7] In Evans' case, a strike vote was taken by the unit members at the plant at which he worked, but the issue did not receive the required two-thirds majority; in Groves' case, a strike vote was never taken.

[8] The Sixth Circuit relied on its reasoning in Fortune, as restated in subsequent opinions:

" 'This circuit has concluded, in essence that regardless of whether the contractual dispute resolution mechanism results in a 'final and binding' decision, the existence of that mechanism will foreclose judicial review provided we find that it was intended to be exclusive. . . .

" 'While we may question the wisdom of foreclosing judicial review of contracts which fail to provide for either 'final' or 'binding' peaceful resolution via arbitration, since the absence of such a provision cannot be taken to infer that the union (and thereby its employees) gained anything in its contract negotiations as a result, it is nevertheless well established in this circuit that a panel of this court is bound by the prior decisions of another panel of the same issues.'

"Mochko v Acme-Cleveland Corp. 826 F2d 1064 (6th Cir 1987) (unpublished per curiam)." 882 F2d, at 1086.

Given the panel's expressed doubt about the correctness of the Circuit precedent that it was following, together with the fact that there was a square conflict in the Circuits, it might have been appropriate for the panel to request a rehearing en banc.

[9] Section 301(a) of the LMRA, 61 Stat 156, provides:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 USC § 185(a) [29 USCS § 185(a)].

(1976). Our opinion in Hines described the strong federal policy favoring judicial enforcement of collective-bargaining agreements. We wrote:

> "Section 301 of the Labor Management Relations Act . . . reflects the interest of Congress in promoting 'a higher degree of responsibility upon the parties to such agreements . . .' S Rep No. 105, 80th Cong, 1st Sess, 17 (1947). The strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board. Smith v Evening News Assn. 371 US 195 [9 L Ed 2d 246, 83 S Ct 267] (1962); Atkinson v Sinclair Rfg. Co. 370 US 238 [8 L Ed 2d 462, 82 S Ct 1318] (1962); Teamsters v Lucas Flour Co. 369 US 95 [7 L Ed 2d 593, 82 S Ct 571] (1962); Charles Dowd Box Co. v Courtney, 368 US 502 [7 L Ed 2d 483, 82 S Ct 519] (1962). Section 301 contemplates suits by and against individual employees as well as between unions and employers; and contrary to earlier indications § 301 suits encompass those seeking to vindicate 'uniquely personal' rights of employees such as wages, hours, overtime pay, and wrongful discharge. Smith v Evening News Assn., supra, at 198-200 [9 L Ed 2d 246, 83 S Ct 267]. Petitioners' present suit against the employer was for wrongful discharge and is the kind of case Congress provided for in § 301." Id., at 561-562, 47 L Ed 2d 231, 96 S Ct 1048.

Thus, under § 301, as in other areas of the law, there is a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes.

[1b, 2b] Respondent correctly points out, however, that a presumption favoring access to a judicial forum is overcome whenever the parties have agreed upon a different method for the adjustment

of their disputes.[10] The company argues that the union has agreed that if the voluntary mediation process is unsuccessful, then the exclusive remedy that remains is either a strike or a lockout, depending on which party asserts the breach of contract. According to this view, the dispute is not whether there was "just cause" for the discharge of Groves and Evans, but whether the union has enough muscle to compel the company to rehire them even if there was just cause for their discharge.

[1c, 3] In our view, the statute's reference to "the desirable method for settlement of grievance disputes," see n 10, supra, refers to the peaceful resolution of disputes over the application or meaning of the collective-bargaining agreement.[11] Of course, the parties may expressly agree to resort to economic warfare rather than to mediation, arbitration, or judicial review, but the statute surely does not favor such an agreement. For in most situations a strike or a lockout, though it may be a method of ending the impasse, is not a method of resolving the merits of the dispute over the application or meaning of the contract. Rather, it is simply a method by which one party imposes its will upon its adversary. Such a method is the antithesis of the peaceful methods of dispute resolution envisaged by Congress when it passed the LMRA.[12]

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[10] Section 203(d) of the LMRA provides:

"Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." 29 USC § 173(d) [29 USCS § 173(d)].

[11] As we explained in Steelworkers v Warrior & Gulf Navigation Co. 363 US 574, 4 L Ed 2d 1409, 80 S Ct 1347 (1960):

"The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." Id., at 581, 4 L Ed 2d 1409, 80 S Ct 1347.

[498 US 175]

[1d] In Associated General Contractors of Illinois v Illinois Conference of Teamsters, 486 F2d 972 (1973), the United States Court of Appeals for the Seventh Circuit was confronted with the same issue presented by this case, albeit with the union, rather than the employer, claiming that the contractual provision foreclosed judicial relief. The Seventh Circuit, in response to the union's argument that the CBA's terms provided that deadlocked grievances would be resolved by economic sanctions without resort to the courts, wrote:

> "Unquestionably 'the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play.' See United Steelworkers of America v American Mfg. Co. 363 US 564, 566 [4 L Ed 2d 1403, 80 S Ct 1343 (1960)]. But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to 'economic recourse' as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do.
>
> "In our first opinion in this case we noted that the parties had not agreed to compulsory arbitration and that the Union had expressly reserved the right to 'economic recourse' in the event of a deadlock. We therefore held that the . . . right to strike was protected by the Norris-LaGuardia Act. However, we did not, and do not now, construe the agreement as requiring economic warfare as the exclusive or even as a desirable method for settling deadlocked grievances. The plain language of the
>
> [498 US 176]
>
> statute protects the right to strike, but there is no plain language in the contract compelling the parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written

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Here, the parties' dispute centers on the question whether there was just cause for the discharges.

[12] "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract." S Rep No. 105, 80th Cong, 1st Sess, p 16 (1947).

much more clearly than this." Id., at 976 (footnote omitted).

This reasoning applies equally to cases in which the union, an employee, or the employer is the party invoking judicial relief.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MEMORANDUM CASES

No. 90-5375. Marshall Ellis, Petitioner v Oklahoma

498 US 977, 112 L Ed 2d 517, 111 S Ct 504.

November 26, 1990. On petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the Court of Criminal Appeals of Oklahoma for further consideration in light of Grady v Corbin, 495 US 508, 109 L Ed 2d 548, 110 S Ct 2084 (1990).

No. ——. Robert C. Powell, Petitioner v Martin Marietta Energy Systems, Inc.

498 US 978, 112 L Ed 2d 517, 111 S Ct 504.

November 26, 1990. The motion to direct the Clerk to file an out of time application for extension of time within which to file a petition for a writ of certiorari is denied.

No. ——. Lewis E. Williams, Petitioner v Theodore Koehler

498 US 978, 112 L Ed 2d 517, 111 S Ct 504.

November 26, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. A-363. Willie Hunter, Jr., Applicant v Fox McKeithen, Secretary of State of Louisiana, et al.

498 US 978, 112 L Ed 2d 517, 111 S Ct 504.

November 26, 1990. The application for an injunction and stay pending appeal from the United States District Court for the Western District of Louisiana, presented to Justice Scalia, and by him referred to the Court, is denied. Justice Marshall and Justice Stevens would grant the application.

No. D-692. In the Matter of Disbarment of Joseph Kalk

498 US 978, 112 L Ed 2d 517, 111 S Ct 505.

November 26, 1990. Joseph Kalk, of Cleveland, Ohio, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 4, 1988, is hereby discharged.

No. D-919. In the Matter of Disbarment of John A. Nichols

498 US 978, 112 L Ed 2d 518, 111 S Ct 505.

November 26, 1990. Disbarment order entered.

No. D-952. In the Matter of Disbarment of John W. Porter, Jr.

498 US 978, 112 L Ed 2d 518, 111 S Ct 505.

November 26, 1990. It is ordered that John W. Porter, Jr., of San Diego, California, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-953. In the Matter of Disbarment of Irving Alan Kanarek

498 US 978, 112 L Ed 2d 518, 111 S Ct 505.

November 26, 1990. It is ordered that Irving Alan Kanarek, of Santa Ana, California, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-954. In the Matter of Disbarment of Virgil D. Dohe

498 US 978, 112 L Ed 2d 518, 111 S Ct 505.

November 26, 1990. It is ordered that Virgil D. Dohe, of Aurora, Colorado, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 111, Original. State of Delaware, Plaintiff v State of New York

498 US 979, 112 L Ed 2d 518, 111 S Ct 505.

November 26, 1990. The motion of Alaska and Vermont for leave to file a complaint in intervention is referred to the Special Master. The motion of Maryland for leave to file a complaint in intervention is referred to the Special Master.

No. 90-113. Clinchfield Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

No. 90-114. Consolidation Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

498 US 979, 112 L Ed 2d 518, 111 S Ct 506, 111 S Ct 748.

November 26, 1990. The motion of the Solicitor General to dispense with printing the joint appendix is granted.

No. 89-1948. Encore Associates, Inc., et al., Petitioners v Willard C. Shiner, et ux.

498 US 979, 112 L Ed 2d 519, 111 S Ct 506.

November 26, 1990. The motion of respondents for damages is denied. Justice Souter took no part in the consideration or decision of this motion.

No. 90-143. Connecticut and John F. DiGiovanni, Petitioners v Brian K. Doehr

498 US 979, 112 L Ed 2d 519, 111 S Ct 506.

November 26, 1990. The motion of Connecticut Bankers Association, et al. for leave to file a brief as amici curiae is granted.

No. 90-549. Clifton R. Wharton, Jr., et al., Petitioners v Ernest F. Dube

498 US 979, 112 L Ed 2d 519, 111 S Ct 506.

November 26, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-5319. Paul McNeil, Petitioner v Wisconsin

498 US 979, 112 L Ed 2d 519, 111 S Ct 507.

November 26, 1990. The motion for appointment of counsel is granted, and it is ordered that Gary M. Luck, Esquire, of Milwaukee, Wisconsin, be appointed to serve as counsel for the petitioner in this case.

No. 90-50. Ellis Gregory, Jr. and Anthony P. Nugent, Jr., Judges, Petitioners v John D. Ashcroft, Governor of Missouri

498 US 979, 112 L Ed 2d 519, 111 S Ct 507.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit granted.

Same case below, 898 F2d 598.

No. 90-350. Jeanne Farrey, fka Jeanne Sanderfoot, Petitioner v Gerald J. Sanderfoot

498 US 980, 112 L Ed 2d 519, 111 S Ct 507.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted.

Same case below, 899 F2d 598.

No. 90-89. International Primate Protection League and its Members, et al., Petitioners v Administrators of Tulane Educational Fund, et al.

498 US 980, 112 L Ed 2d 520, 111 S Ct 507.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted limited to Question 1 presented by the petition.

Same case below, 895 F2d 1056.

No. 90-149. Michigan, Petitioner v Nolan K. Lucas

498 US 980, 112 L Ed 2d 520, 111 S Ct 507.

November 26, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Court of Appeals of Michigan granted.

No. 89-7731. Samuel L. Sommer, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 980, 112 L Ed 2d 520, 111 S Ct 508.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 898 F2d 895.

No. 89-7826. Ruth Turner, Petitioner v District Board of Trustees of Miami-Dade Community College

498 US 980, 112 L Ed 2d 520, 111 S Ct 508.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 264.

No. 90-90. Martin J. Hughes, Petitioner v United States

498 US 980, 112 L Ed 2d 520, 111 S Ct 508, reh den 498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1027.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1495.

No. 90-181. Anders Migdaleck, Petitioner v United States

498 US 980, 112 L Ed 2d 520, 111 S Ct 508.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 530.

No. 90-196. State Salvage, Inc., et al., Petitioners v Superior Court of California, County of Los Angeles (John Van de Kamp, Attorney General of California, Real Party in Interest)

498 US 980, 112 L Ed 2d 521, 111 S Ct 508.

November 26, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-201. Colonial Village, Inc., Petitioner v Girardeau A. Spann, et al.

No. 90-202. Mobil Land Development Corporation, Petitioner v Girardeau S. Spann, et al.

498 US 980, 112 L Ed 2d 521, 111 S Ct 508, 111 S Ct 509.

November 26, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same cases below, 283 App DC 216, 899 F2d 24., 102 ALR Fed 695

No. 90-206. Linda Backiel, Petitioner v United States

498 US 980, 112 L Ed 2d 521, 111 S Ct 509.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 906 F2d 78.

No. 90-270. Susan Brandt, et al., Petitioners v Chalkboard, Inc., et al.

498 US 980, 112 L Ed 2d 521, 111 S Ct 509.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1375.

No. 90-309. Anne M. Hart, et al., Petitioners v United States

498 US 980, 112 L Ed 2d 521, 111 S Ct 509.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 894 F2d 1539.

No. 90-354, Sarah Elizabeth Frey, et al., Petitioners v William K. Reilly, Administrator, Environmental Protection Agency

498 US 981, 112 L Ed 2d 521, 111 S Ct 509, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 900 F2d 1091.

No. 90-361. Kenrich Petrochemicals, Inc., Petitioner v National Labor Relations Board

498 US 981, 112 L Ed 2d 522, 111 S Ct 509.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 907 F2d 400.

No. 90-374. William Downs, Petitioner v Lauro F. Cavazos, Secretary, Department of Education, et al.

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 28.

No. 90-376. Ricky Wayne Gordon, Petitioner v United States

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 48.

No. 90-379. Paul Fisher, et ux., Petitioners v Commissioner of Internal Revenue

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 703.

No. 90-395. Roger Endell, Commissioner, Alaska Department of Corrections, Petitioner v Michael T. Smith

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 860 F2d 1528.

No. 90-405. Charles A. Gower, Trustee, Petitioner v Farmers Home Administration

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 1136.

No. 90-436. Roosevelt Daniels, et al., Petitioners v United States

498 US 981, 112 L Ed 2d 522, 111 S Ct 510.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 1238.

No. 90-476. Wyeth-Ayerst Laboratories Division of American Home Products Corporation, Petitioner v Michelle Graham, an Infant Under the Age of 18 who Sues by her Parents, Guardians, and Next Friends, Charles Graham, et ux.

498 US 981, 112 L Ed 2d 523, 111 S Ct 511.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 906 F2d 1399.

No. 90-517. Hinshaw Music, Inc., and Gilbert M. Martin, Petitioners v William L. Dawson

498 US 981, 112 L Ed 2d 523, 111 S Ct 511.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 731.

No. 90-519. Jay D. Hirsch, Petitioner v Oakeley Vaughan Underwriting, Limited, et al.

498 US 981, 112 L Ed 2d 523, 111 S Ct 511.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 704.

No. 90-521. Emanuel M. Comora, et ux., Petitioners v Irvin Radell, et al.

498 US 981, 112 L Ed 2d 523, 111 S Ct 511, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

November 26, 1990. Petition for writ of ceriorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 262.

No. 90-523. Bryan W. Nicolle-Wagner and Rachelle J. Nicolle-Wagner, Petitioners v County of Hawaii

498 US 982, 112 L Ed 2d 523, 111 S Ct 511.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Hawaii denied.

Same case below, 71 Haw 654, 833 P2d 896.

No. 90-527. Brower's Moving & Storage, Inc., Petitioner v C. Victor Benson, et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 511.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 310.

No. 90-531. Robert Woods, Petitioner v Louis Rosenberg, Judge, United States District Court for the Western District of Pennsylvania, et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 512.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 965.

No. 90-532. Ira Banks, Petitioner v Sterling Merchandise, Inc., et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 512, reh den 498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 904 F2d 38.

No. 90-534. Mary J. Waller, Petitioner v Provident Life & Accident Insurance Company

498 US 982, 112 L Ed 2d 524, 111 S Ct 512.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 906 F2d 985.

No. 90-536. John Gard, et al., Petitioners v Wisconsin State Elections Board, et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 512.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Wisconsin denied.

Same case below, 156 Wis 2d 28, 456 NW2d 809.

No. 90-541. Lonnie B. Rupert, Petitioner v Macon W. Gravlee, Jr., et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 512, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-542. American Medical Association, Petitioner v Chester A. Wilk, et al.

498 US 982, 112 L Ed 2d 524, 111 S Ct 513.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 895 F2d 352.

No. 90-544. Louisiana Patient's Compensation Fund, Petitioner v Wally Eugene Stuka, et ux.

498 US 982, 112 L Ed 2d 525, 111 S Ct 513.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 561 So 2d 1371.

No. 90-545. Saud ben Abdul Aziz, Petitioner v CTA

498 US 982, 112 L Ed 2d 525, 111 S Ct 513.

November 26, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

No. 90-554. Jack R. Thomas, Petitioner v Garrett Corporation

498 US 982, 112 L Ed 2d 525, 111 S Ct 513.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 41.

No. 90-556. Francis Daley, Robert Kalvinek, and Edward Cahill, Petitioners v City of Hartford

498 US 982, 112 L Ed 2d 525, 111 S Ct 513.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 215 Conn 14, 574 A2d 194.

No. 90-561. Henry G. Toupal, Petitioner v Norma R. Toupal

498 US 982, 112 L Ed 2d 525, 111 S Ct 513.

November 26, 1990. Petition for writ of certiorari to the Court of Appeals of New Mexico denied.

Same case below, 109 NM 774, 790 P2d 1055.

No. 90-562. Monica Getz, Petitioner v Stanley Getz

498 US 983, 112 L Ed 2d 525, 111 S Ct 514.

November 26, 1990. Petition for

writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

No. 90-564. Harry Morgan, Petitioner v ANR Freight System, Inc.

498 US 983, 112 L Ed 2d 526, 111 S Ct 514.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-565. Melvin W. Krizak, et ux., Petitioners v United States

498 US 983, 112 L Ed 2d 526, 111 S Ct 514.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 704.

No. 90-566. Joseph Humenik, Petitioner v Owens-Corning Fiberglas Corporation

498 US 983, 112 L Ed 2d 526, 111 S Ct 514.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 962.

No. 90-568. N. Denney Crisp, et ux., Petitioners v Charles E. Rubin, Trustee

498 US 983, 112 L Ed 2d 526, 111 S Ct 514.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1573.

No. 90-569. NAACP, Detroit Branch, et al., Petitioners v Detroit Police Officers Association, et al.

498 US 983, 112 L Ed 2d 526, 111 S Ct 514, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 900 F2d 903.

No. 90-570. Kenneth L. McGinnis, Petitioner v James Rose

498 US 983, 112 L Ed 2d 526, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 910 F2d 400.

No. 90-571. Jackson Leeds, Petitioner v Robert A. Mosbacher, Secretary of Commerce, et al.

498 US 983, 112 L Ed 2d 527, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-573. Armistead Homes Corporation, Petitioner v Karen Pinchback

498 US 983, 112 L Ed 2d 527, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1447.

No. 90-574. Midland Enterprises Inc., et al., Petitioners v Pillsbury Company, et al.

498 US 983, 112 L Ed 2d 527, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 317.

No. 90-576. Philippines, Micronesia & Orient Navigation Company, Petitioner v NYSA-ILA Pension Trust Fund, et al.

498 US 983, 112 L Ed 2d 527, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 39.

No. 90-580. Kondian R. Rajaram, Petitioner v International Typographical Union, et al.

498 US 983, 112 L Ed 2d 527, 111 S Ct 515.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 967.

No. 90-585. Donald E. Williams, Commissioner of Department of Motor Vehicles of Virginia, et al., Petitioners v Saturn Distribution Corporation

498 US 983, 112 L Ed 2d 527, 111 S Ct 516.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 719, 108 ALR Fed 159.

No. 90-587. Cone Corporation, et al., Petitioners v Hillsborough County, et al.

498 US 983, 112 L Ed 2d 528, 111 S Ct 516.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 908.

No. 90-591. William B. Young, Jr., et al., Petitioners v New York City Transit Authority, et al.

498 US 984, 112 L Ed 2d 528, 111 S Ct 516.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 903 F2d 146.

No. 90-592. Richard R. Stenclik, et ux., Petitioners v Commissioner of Internal Revenue

498 US 984, 112 L Ed 2d 528, 111 S Ct 516.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 25.

No. 90-596. Thomas O. Canitia, Petitioner v Yellow Freight Systems, Inc.

498 US 984, 112 L Ed 2d 528, 111 S Ct 516.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 903 F2d 1064.

No. 90-597. Robert C., et ux., Petitioners v Miguel T. and Louise N.

498 US 984, 112 L Ed 2d 528, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 387, 559 NYS2d 855, 559 NE2d 418.

No. 90-599. Robert L. Fiacco, Petitioner v City of Los Angeles, et al.

498 US 984, 112 L Ed 2d 528, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 976.

No. 90-601. Edward G. Webb, et ux., Petitioners v United States

498 US 984, 112 L Ed 2d 528, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Ninth Circuit denied.

Same case below, 907 F2d 155.

No. 90-612. Norman S. Adams, et al., Petitioners v Avondale Industries, Inc., et al.

498 US 984, 112 L Ed 2d 529, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 943.

No. 90-623. Darrell S. Claspill, Petitioner v Missouri Pacific Railroad

498 US 984, 112 L Ed 2d 529, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 793 SW2d 139.

No. 90-624. Edison Homes, Inc., Formerly Ardmor, Inc., Petitioner v Commissioner of Internal Revenue

498 US 984, 112 L Ed 2d 529, 111 S Ct 517.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 903 F2d 579.

No. 90-629. Dillard E. Kelley, Sr., Petitioner v Wisconsin

498 US 984, 112 L Ed 2d 529, 111 S Ct 518.

November 26, 1990. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

No. 90-632. Caesar Electronics, Inc., Petitioner v Fairchild Semiconductor Corporation, et al.

498 US 984, 112 L Ed 2d 529, 111 S Ct 518.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 287.

No. 90-642. 1903 Obscene Magazines, et al., Petitioners v United States

498 US 984, 112 L Ed 2d 529, 111 S Ct 518.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 1338.

No. 90-648. Claude Rodriguez, Petitioner v General Motors Corporation, et al.

498 US 984, 112 L Ed 2d 530, 111 S Ct 518.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 710.

No. 90-651. Michael E. Plunkett, et al., Petitioners v Federal Deposit Insurance Corporation, Receiver of First Interstate Bank of Alaska, et al.

498 US 985, 112 L Ed 2d 530, 111 S Ct 518, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1579.

No. 90-658. Green Drugs, et al., Petitioners v United States

498 US 985, 112 L Ed 2d 530, 111 S Ct 518.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 905 F2d 694.

No. 90-670. DFW Metro Line Services, Petitioner v Southwestern Bell Telephone Company

498 US 985, 112 L Ed 2d 530, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1267.

No. 90-679. Cheney Railroad Company, Inc., Petitioner v Interstate Commerce Commission, et al.

498 US 985, 112 L Ed 2d 530, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 101, 902 F2d 66.

No. 90-682. Richard Kelly, Petitioner v United States

498 US 985, 112 L Ed 2d 530, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 79, 901 F2d 1131.

No. 90-687. Oscar Theodore Polk, III, Petitioner v United States

498 US 985, 112 L Ed 2d 531, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 54.

No. 90-689. Joseph A. Kraus, Petitioner v United States

498 US 985, 112 L Ed 2d 531, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 909 F2d 1486.

No. 90-5116. Terri Ann Meitinger, Petitioner v United States

498 US 985, 112 L Ed 2d 531, 111 S Ct 519.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 901 F2d 27.

No. 90-5140. Ronald Price, Petitioner v Dorcas Hardy

498 US 985, 112 L Ed 2d 531, 111 S Ct 520, reh den 498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-5161. Anthony Bruce Johnson, Petitioner v United States

498 US 985, 112 L Ed 2d 531, 111 S Ct 520.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 903 F2d 1219.

No. 90-5199. Michael G. Coody, Petitioner v A. G. Thomas, Warden

498 US 985, 112 L Ed 2d 531, 111 S Ct 520.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5295. Thomas J. Twine, Petitioner v United States

498 US 985, 112 L Ed 2d 531, 111 S Ct 520.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1563.

No. 90-5321. David James Perris, Petitioner v California

498 US 985, 112 L Ed 2d 532, 111 S Ct 520.

November 26, 1990. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5363. George Perry Pollack, Petitioner v United States

498 US 985, 112 L Ed 2d 532, 111 S Ct 520.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 895 F2d 686.

No. 90-5383. Sidney Worthen, Petitioner v Oklahoma

498 US 986, 112 L Ed 2d 532, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 90-5408. James Grimes, Petitioner v United States

498 US 986, 112 L Ed 2d 532, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 899 F2d 731.

No. 90-5415. Jerome T. Bledsoe, Petitioner v United States

498 US 986, 112 L Ed 2d 532, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 898 F2d 430.

No. 90-5422. Phillip Dale Selfa, Petitioner v United States

498 US 986, 112 L Ed 2d 532, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 918 F2d 749.

No. 90-5483. Steven Mitchell, Petitioner v United States

498 US 986, 112 L Ed 2d 532, 111 S Ct 521.

November 26, 1990. Petition for

writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 569 A2d 177.

No. 90-5489. Benjamin Smith, Petitioner v United States

498 US 986, 112 L Ed 2d 533, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 42.

No. 90-5510. Larry R. Ketchens, Petitioner v Louisiana

498 US 986, 112 L Ed 2d 533, 111 S Ct 521.

November 26, 1990. Petition for writ of certiorari to the Court of Appeal of Louisiana, Fourth Circuit, denied.

Same case below, 552 So 2d 485.

No. 90-5523. Eric Yates, Petitioner v Memphis Bakery Employers Association, et al.

498 US 986, 112 L Ed 2d 533, 111 S Ct 522.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 151.

No. 90-5544. Peter R. Johl, Petitioner v Ellen A. Peters, et al.

498 US 986, 112 L Ed 2d 533, 111 S Ct 522, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-5546. Mohammed Farhad Khorrami, Petitioner v United States

498 US 986, 112 L Ed 2d 533, 111 S Ct 522.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 895 F2d 1186.

No. 90-5612. Francisco Rodrigo Garcia, Petitioner v United States

498 US 986, 112 L Ed 2d 533, 111 S Ct 522.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 905 F2d 557.

No. 90-5631. Mark Hughes, Petitioner v Arthur Leonardo, Superintendent, Green Meadows Correctional Facility

498 US 986, 112 L Ed 2d 534, 111 S Ct 522.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 145.

No. 90-5633. David Meadows, Petitioner v Carl Legursky, Warden

498 US 986, 112 L Ed 2d 534, 111 S Ct 523.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 903.

No. 90-5644. Jitendra Panchal and Jagadish Panchal, Petitioners v United States

498 US 986, 112 L Ed 2d 534, 111 S Ct 523.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 896 F2d 1303.

No. 90-5649. Marcelino Rubio, Petitioner v United States

498 US 986, 112 L Ed 2d 534, 111 S Ct 523.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 965.

No. 90-5714. John Jairo Arias, Petitioner v United States

498 US 986, 112 L Ed 2d 534, 111 S Ct 523.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 606.

No. 90-5755. Raymond H. Hertel, et al., Petitioners v Federal Land Bank of St. Louis

498 US 987, 112 L Ed 2d 534, 111 S Ct 523, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 907 F2d 152.

No. 90-5822. R. Joseph Greene, Petitioner v Edwin Meese, Former Attorney General, et al.

498 US 987, 112 L Ed 2d 534, 111 S Ct 523.

November 26, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 962.

No. 90-5825. Paul Fazzini, Petitioner v Glen Henman, et al.

498 US 987, 112 L Ed 2d 535, 111 S Ct 524.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5826. Kasib Tauheed Bilal, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 987, 112 L Ed 2d 535, 111 S Ct 524.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5830. Clifford Delane Davis, Petitioner v Raymond Hayes, Superintendent, Franklin Correctional Center, et al.

498 US 987, 112 L Ed 2d 535, 111 S Ct 524.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1137.

No. 90-5831. Franklyn S. Weisgerber, Petitioner v United States

498 US 987, 112 L Ed 2d 535, 111 S Ct 524.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-5833. James Cook, Petitioner v Florida Parole Commission

498 US 987, 112 L Ed 2d 535, 111 S Ct 524.

November 26, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, First District, denied.

Same case below, 566 So 2d 794.

No. 90-5834. Sharon Myrl Van Leeuwen and W. W. J. Van Leeuwen, Petitioners v Robert W. McCorkindale, Circuit Judge, Arkansas, et al.

498 US 987, 112 L Ed 2d 535, 111 S Ct 525, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

November 26, 1990. Petition for writ is certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5841. Cornelio X, Petitioner v United States

498 US 987, 112 L Ed 2d 536, 111 S Ct 525.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 907 F2d 155.

No. 90-5848. Albert Claude Parker, Petitioner v J. W. Fairman, Warden, et al.

498 US 987, 112 L Ed 2d 536, 111 S Ct 525, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 37.

No. 90-5855. Mary Juanita Sellers, Petitioner v Delgado College, et al.

498 US 987, 112 L Ed 2d 536, 111 S Ct 525, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 1189.

No. 90-5861. Bill Herron, Petitioner v MacArthur Woodruff, et al.

498 US 987, 112 L Ed 2d 536, 111 S Ct 525.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 908 F2d 310.

No. 90-5866. Jo-Ann Marshburn, Petitioner v Meredith T. Richardson

498 US 987, 112 L Ed 2d 536, 111 S Ct 525, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 723.

No. 90-5868. James Duane Haywood, Petitioner v Michigan

498 US 987, 112 L Ed 2d 536, 111 S Ct 526.

November 26, 1990. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-5869. Hubert Ferrier, Petitioner v Jack R. Duckworth, Superintendent, Indiana State Reformatory

498 US 988, 112 L Ed 2d 536, 111 S Ct 526.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 545.

No. 90-5870. Wilma Ringgold, Petitioner v Shell Chemical Company, Geismar, Louisiana, A Division of Shell Oil Company, Incorporated

498 US 988, 112 L Ed 2d 537, 111 S Ct 526.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 147.

No. 90-5871. Hein De Jong, Petitioner v Pennsylvania

498 US 988, 112 L Ed 2d 537, 111 S Ct 526.

November 26, 1990. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 395 Pa Super 651, 570 A2d 587.

No. 90-5874. John Lee Boyd, Petitioner v Steve W. Puckett, Superintendent, Mississippi State Penitentiary, et al.

498 US 988, 112 L Ed 2d 537, 111 S Ct 526.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 905 F2d 895.

No. 90-5876. Zachary Winfield Davis, Petitioner v United States

498 US 988, 112 L Ed 2d 537, 111 S Ct 526.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1469.

No. 90-5877. Kenneth G. Thompson, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 988, 112 L Ed 2d 537, 111 S Ct 527.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5880. Edward A. Ganey, Jr., Petitioner v Aaron J. Johnson, et al.

498 US 988, 112 L Ed 2d 537, 111 S Ct 527, reh den 498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 966.

No. 90-5885. Michael Sindram, Petitioner v Jonathon T. Moran, et al.

498 US 988, 112 L Ed 2d 538, 111 S Ct 527, reh den 498 US 1043, 112 L Ed 2d 707, 111 S Ct 719.

November 26, 1990. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-5888. Eugene Keith Sulie, Petitioner v Jack R. Duckworth, Warden, et al.

498 US 988, 112 L Ed 2d 538, 111 S Ct 527.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-5890. Akili S. Amen-Ra, aka Johnnie Tasby, Petitioner v Gary Adams, et al.

498 US 988, 112 L Ed 2d 538, 111 S Ct 527.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 728.

No. 90-5892. Roy Anderson, Petitioner v United States

498 US 988, 112 L Ed 2d 538, 111 S Ct 527.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1414.

No. 90-5899. Kathleen Cogis Howell, Petitioner v California

498 US 988, 112 L Ed 2d 538, 111 S Ct 528.

November 26, 1990. Petition for writ of certiorari to the Appellate Department, Superior Court of California, County of Los Angeles, denied.

No. 90-5901. Antonio L. Bullock, Petitioner v United States

498 US 988, 112 L Ed 2d 538, 111 S Ct 528.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 968.

No. 90-5908. Thomas Frank Moreno, Petitioner v California

498 US 988, 112 L Ed 2d 539, 111 S Ct 528.

November 26, 1990. Petition for writ of certiorari to the Appellate Department, Superior Court of California, County of Los Angeles, denied.

No. 90-5910. Karen Lynne Smith Harper, Petitioner v Dale Bumpers, et al.

498 US 989, 112 L Ed 2d 539, 111 S Ct 528, reh den 498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-5911. Gregory Kelly, Petitioner v Charles Zimmerman, Warden, et al.

498 US 989, 112 L Ed 2d 539, 111 S Ct 528.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5916. Micheal A. Johnson, Petitioner v Gladys Mack

498 US 989, 112 L Ed 2d 539, 111 S Ct 528, reh den 498 US 1060, 112 L Ed 2d 794, 111 S Ct 773.

November 26, 1990. Petition for writ of certiorari to the Distirct of Columbia Court of Appeals denied.

No. 90-5920. E. N. Gilbertson, Petitioner v Rebecca E. Walker, et al.

498 US 989, 112 L Ed 2d 539, 111 S Ct 528.

November 26, 1990. Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District, denied.

Same case below, 557 So 2d 46.

No. 90-5934. Judy A. Henderson, Petitioner v Bryan Goeke, Superintendent, Renz Correctional Center

498 US 989, 112 L Ed 2d 539, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 903 F2d 534.

No. 90-5953. Dewayne W. Waters, Petitioner v Maryland

498 US 989, 112 L Ed 2d 539, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 320 Md 52, 575 A2d 1244.

No. 90-5954. John Stuart Robertson, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 896 F2d 555.

No. 90-5955. James Allen White, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 754.

No. 90-5956. Elwood Williard, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-5957. Ted F. Owens, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 529.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-5960. George H. Croft, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 908 F2d 384.

No. 90-5963. Curtis J. Delahoussaye, Jr., Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 989, 112 L Ed 2d 540, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5975. Douglas Wayne Thompson, Petitioner v United States

498 US 989, 112 L Ed 2d 540, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Eighth Circuit denied.

Same case below, 906 F2d 1292.

No. 90-5976. Raymond T. Pryer, Petitioner v Charles H. Zimmerman, Superintendent, State Correctional Institution at Waymart

498 US 989, 112 L Ed 2d 541, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-5984. Eddie Lee Johnson, Petitioner v United States

498 US 989, 112 L Ed 2d 541, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 1289.

No. 90-5986. Mattie Louise Avery, Petitioner v United States

498 US 990, 112 L Ed 2d 541, 111 S Ct 530.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 734.

No. 90-5989. Emigdio Aponte-Suarez, Petitioner v United States

498 US 990, 112 L Ed 2d 541, 111 S Ct 531.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 905 F2d 483

No. 90-5990. Alan J. Allery, Petitioner v United States

498 US 990, 112 L Ed 2d 541, 111 S Ct 531.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 204.

No. 90-5995. Robert James Bruning, Petitioner v United States

498 US 990, 112 L Ed 2d 541, 111 S Ct 531.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 914 F2d 212.

No. 90-5996. Jorge Ramirez, Petitioner v United States

498 US 990, 112 L Ed 2d 542, 111 S Ct 531.

November 26, 1990. Petiton for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 910 F2d 1069.

No. 90-5997. Ramon Gregorio Salazar, Petitioner v United States

498 US 990, 112 L Ed 2d 542, 111 S Ct 531.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 914 F2d 239.

No. 90-5998. Howard Emmett Horsley, Petitioner v United States

498 US 990, 112 L Ed 2d 542, 111 S Ct 531.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-6003. Victor Alvarez, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division, et al.

498 US 990, 112 L Ed 2d 542, 111 S Ct 532.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 692.

No. 90-6005. Loretta Walton, Petitioner v United States

498 US 990, 112 L Ed 2d 542, 111 S Ct 532.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 1289.

No. 90-6009. Cornelius Snow, Petitioner v United States

498 US 990, 112 L Ed 2d 542, 111 S Ct 532.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-6010. Frank Buckley, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 990, 112 L Ed 2d 543, 111 S Ct 532.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 263.

No. 90-6016. Trudie Weddle, Petitioner v United States

498 US 990, 112 L Ed 2d 543, 111 S Ct 532.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 570.

No. 90-6017. Alvin Shields, Petitioner v United States

498 US 990, 112 L Ed 2d 543, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1480.

No. 90-6021. Timothy Smith, Petitioner v United States

498 US 990, 112 L Ed 2d 543, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 639.

No. 90-6023. Robert V. Gadson, Petitioner v United States

498 US 990, 112 L Ed 2d 543, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6036. Johnny "Mac" Harper, Petitioner v United States

498 US 991, 112 L Ed 2d 543, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1480.

No. 90-6039. Douglas Knight, Petitioner v United States

498 US 991, 112 L Ed 2d 543, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 1.

No. 90-6042. Lucius King, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 533.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 965.

No. 90-6045. Donald Bennett, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 189.

No. 90-6052. Becky Marie Shellman, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 721.

No. 90-6062. Jimi Lamar Birge, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 1500.

No. 90-6063. Frank Polk, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 212.

No. 90-6066. Darryl Glenn Malin, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 163.

No. 90-6074. Robert Gabay, Petitioner v United States

498 US 991, 112 L Ed 2d 544, 111 S Ct 534.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1580.

No. 90-6081. Hector Mario Martinez, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 888 F2d 126.

No. 90-6084. Ricardo Villegas, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 1324.

No. 90-6088. Mark Albers, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals from the Fifth Circuit denied.

Same case below, 908 F2d 969.

No. 90-6095. Alberta Anderson, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 258.

No. 90-6106. Dennis Bryant Damer, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 910 F2d 1239.

No. 90-6108. Johnie D. Ford, Petitioner v United States

498 US 991, 112 L Ed 2d 545, 111 S Ct 535.

November 26, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-345. Richard L. Dugger, Secretary, Florida Department of Corrections, et al., Petitioners v Jack Stanley Towne

498 US 991, 112 L Ed 2d 546, 111 S Ct 536.

November 26, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 1104.

No. 90-360. Nuclear Management and Resources Council, Inc., Petitioner v Public Citizen, et al.

498 US 992, 112 L Ed 2d 546, 111 S Ct 536.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice White would grant certiorari limited to Question 2 presented by the petition.

Same case below, 284 App DC 41, 901 F2d 147.

No. 90-387. Lion Uniform, Inc., Janesville Apparel Division, Petitioner v National Labor Relations Board

498 US 992, 112 L Ed 2d 546, 111 S Ct 536.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 905 F2d 120.

No. 90-551. McEvoy Travel Bureau, Inc., Petitioner v Heritage Travel, Inc., et al.

498 US 992, 112 L Ed 2d 546, 111 S Ct 536.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case beow, 904 F2d 786.

No. 90-555. Michael R. Wood, Petitioner v Alameda County Superior Court, et al.

498 US 992, 112 L Ed 2d 546, 111 S Ct 536.

November 26, 1990. The motion of petitioner to consolidate this case with No. 90-661, Wood v Alameda County Superior Court, is denied. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-572. Wilson Sporting Goods, Co., Petitioner v David Geoffrey & Associates, dba Slazenger, et al.

498 US 992, 112 L Ed 2d 547, 111 S Ct 537.

November 26, 1990. The motion of respondents to seal Rule 29.1 listing is granted. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 904 F2d 677.

No. 90-5100. Glenn Ford, Petitioner v Louisiana

498 US 992, 112 L Ed 2d 547, 111 S Ct 537, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 563 So 2d 873.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5541. Derick Peterson, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections

498 US 992, 112 L Ed 2d 547, 111 S Ct 537.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 882.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5716. Paul Alfred Brown, Petitioner v Florida

498 US 992, 112 L Ed 2d 547, 111 S Ct 537.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 565 So 2d 304.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5839. Betty Lou Beets, Petitioner v Texas

498 US 992, 112 L Ed 2d 548, 111 S Ct 538, reh den 498 US 996, 112 L Ed 2d 559, 111 S Ct 552.

November 26, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5949. Richard Barry Randolph, Petitioner v Florida

498 US 992, 112 L Ed 2d 548, 111 S Ct 538.

November 26, 1990. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 562 So 2d 331.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5628. George E. Kinney, et al., Petitioners v Louis W. Sullivan, Secretary of Health and Human Services; and Roger J. Plourde, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 993, 112 L Ed 2d 548, 111 S Ct 538.

November 26, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice White would grant certiorari.

Same case below, 907 F2d 143.

No. 90-6070. Israel G. Grossman, Petitioner v United States

498 US 993, 112 L Ed 2d 548, 111 S Ct 538.

November 26, 1990. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 35.

No. 90-5891. In Re Henry V. Geurin, Petitioner

498 US 979, 112 L Ed 2d 548, 111 S Ct 538.

November 26, 1990. The petition for writ of mandamus is denied.

No. 90-6085. In Re Charles C. Douglass, Petitioner

498 US 979, 112 L Ed 2d 549, 111 S Ct 539, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

November 26, 1990. The petition for writ of mandamus and/or prohibition is denied.

No. 89-7873. Carl D. McQuillion, Petitioner v Ron Koenig, Chairman, California Board of Prison Terms

498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

November 26, 1990. The petition for rehearing is denied.

Former Decision, 498 US 919, 112 L Ed 2d 248, 111 S Ct 294.

No. 89-1588. Curtis L. Wrenn, Petitioner v Ohio, et al.

498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 810, 112 L Ed 2d 20, 111 S Ct 43.

No. 89-1708. James T. Kouno, Petitioner v Oregon State Board of Higher Education, et al.

498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 811, 112 L Ed 2d 23, 111 S Ct 46.

No. 89-1790. Amy McCain, a Minor, by her Next Friend, William R. McCain, et al., Petitioners v Houston Independent School District, et al.

498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 813, 112 L Ed 2d 27, 111 S Ct 51.

No. 89-1847. Jacquelyn F. Jones, Petitioner v Turner Broadcasting System, Inc.

498 US 993, 112 L Ed 2d 549, 111 S Ct 539.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 815, 112 L Ed 2d 31, 111 S Ct 56.

No. 89-1945. Laurine Brown (LaMar), Petitioner v Fox Valley & Vicinity Construction Workers Pension Fund, et al.

498 US 993, 112 L Ed 2d 549, 111 S Ct 540.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 820, 112 L Ed 2d 41, 111 S Ct 67.

No. 89-1950. Ross A. Phillips, Petitioner v United States Department of Agriculture, Forest Service

498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 820, 112 L Ed 2d 42, 111 S Ct 67.

No. 89-1966. Richard A. Banks, Petitioner v H. Lawrence Garrett, III, Secretary of the Navy

498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

No. 89-2022. Mary A. Vogel, Petitioner v Mark J. Ellis (three cases)

498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 824, 112 L Ed 2d 49, 111 S Ct 76.

No. 89-2028. Richard Lee Sands, Petitioner v Kentucky

498 US 993, 112 L Ed 2d 550, 111 S Ct 540.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 824, 112 L Ed 2d 50, 111 S Ct 77.

No. 89-7188. Thomas Mitchell Deboue, Petitioner v Louisiana

498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 174, 111 S Ct 215.

No. 89-7349. Winston Willis, Petitioner v First Bank National Association

498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 827, 112 L Ed 2d 56, 111 S Ct 84.

No. 89-7355. Larry Eyler, Petitioner v Illinois

498 US 993, 112 L Ed 2d 550, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 174, 111 S Ct 215.

No. 89-7430. Mumia Abu-Jamal, Petitioner v Pennsylvania

498 US 993, 112 L Ed 2d 551, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 175, 111 S Ct 215.

No. 89-7493. Eugene L. Goad, Petitioner v Terry L. Morris, Warden

498 US 993, 112 L Ed 2d 551, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 829, 112 L Ed 2d 60, 111 S Ct 88.

No. 89-7526. Kenneth W. Evans, Petitioner v United States Postal Service, et al.

498 US 994, 112 L Ed 2d 551, 111 S Ct 541.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 830, 112 L Ed 2d 62, 111 S Ct 90.

No. 89-7570. John Michael Davis, Petitioner v Ralph Kemp, Warden

498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 176, 111 S Ct 217.

No. 89-7574. Ronald Pryor, Petitioner v Deborah Allen

498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 831, 112 L Ed 2d 66, 111 S Ct 94.

No. 89-7578. Bernard Harris, Petitioner v Thomas J. Burdorff

498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 831, 112 L Ed 2d 66, 111 S Ct 95.

No. 89-7603. Robert Leppaluoto, et ux., Petitioners v United States

498 US 994, 112 L Ed 2d 551, 111 S Ct 542.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 832, 112 L Ed 2d 68, 111 S Ct 97.

No. 89-7614. Doris E. Wyatt, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 994, 112 L Ed 2d 552, 111 S Ct 542.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 833, 112 L Ed 2d 69, 111 S Ct 98.

No. 89-7615. Winston Willis, Petitioner v First Bank National Association

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 833, 112 L Ed 2d 69, 111 S Ct 98.

No. 89-7616. James L. Pitts, Petitioner v Georgia

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 177, 111 S Ct 217.

No. 89-7638. Willie James Hall, Petitioner v Georgia

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 177, 111 S Ct 221.

No. 89-7695. Jack Frost, Petitioner v California

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 835, 112 L Ed 2d 75, 111 S Ct 104.

No. 89-7744. James Edward Anderson, Petitioner v Robert G. Borg, Warden, et al.

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 838, 112 L Ed 2d 80, 111 S Ct 111.

No. 89-7793. Richard Dean McMillin, Petitioner v Missouri

498 US 994, 112 L Ed 2d 552, 111 S Ct 543.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 179, 111 S Ct 225.

No. 89-7843. Ray Stamey, Petitioner v Georgia

498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 843, 112 L Ed 2d 91, 111 S Ct 123.

No. 90-2. Marshall P. Safir, Petitioner v Prudential Insurance Company of America, et al.

498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 845, 112 L Ed 2d 97, 111 S Ct 129.

No. 90-8. Curtis L. Wrenn, Petitioner v Board of Directors, Whitney M. Young, Jr., Health Center, Inc., et al.

498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 845, 112 L Ed 2d 98, 111 S Ct 130.

No. 90-58. Michael Lynn Smith, Petitioner v United States

498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 848, 112 L Ed 2d 103, 111 S Ct 135.

No. 90-86. Earlene Polyak, Petitioner v Jim Hamilton, Judge, Chancery Court of Lawrence County, Tennessee

498 US 994, 112 L Ed 2d 553, 111 S Ct 544.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 849, 112 L Ed 2d 105, 111 S Ct 139.

No. 90-116. Delbert Neil Helm, dba Bills Green Light Auto Parts, Petitioner v Mid-America Industries, Inc.

498 US 994, 112 L Ed 2d 553, 111 S Ct 545.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 850, 112 L Ed 2d 108, 111 S Ct 142.

No. 90-156. Robert B. Machen, Petitioner v United States

498 US 994, 112 L Ed 2d 553, 111 S Ct 545.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 852, 112 L Ed 2d 111, 111 S Ct 145.

No. 90-177. Betty P. Douthwaite, Petitioner v Virginia

498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

Former Decision, 498 US 853, 112 L Ed 2d 114, 111 S Ct 147.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-188. International Consulting Services, Inc., Petitioner v Richard K. Gilbert

498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 854, 112 L Ed 2d 115, 111 S Ct 149.

No. 90-265. Peter G. Stack, Petitioner v United States

498 US 994, 112 L Ed 2d 554, 111 S Ct 545.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 856, 112 L Ed 2d 120, 111 S Ct 154.

No. 90-313. Earlene Polyak, Petitioner v Frank Hulen, et al.; and Earlene Polyak, Petitioner v William Boston, et al.

498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 899, 112 L Ed 2d 212, 111 S Ct 254.

No. 90-362. Avis J. Smith, Petitioner v United States Air Force

498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 900, 112 L Ed 2d 214, 111 S Ct 256.

No. 90-5002. James W. Moore, Petitioner v Trump Casino-Hotel

498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 856, 112 L Ed 2d 121, 111 S Ct 155.

No. 90-5037. Barney L. Byrum, Elizabeth Byrum as Guardian of Spencer Nathaniel Byrum, Individually, Petitioners v Michael Grimes and Thomas Burton

498 US 994, 112 L Ed 2d 554, 111 S Ct 546.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 858, 112 L Ed 2d 125, 111 S Ct 160.

No. 90-5052. Susan G. Madden, Petitioner v James S. Thorburn, et al.

498 US 994, 112 L Ed 2d 555, 111 S Ct 546.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 859, 112 L Ed 2d 127, 111 S Ct 162.

No. 90-5066. Nathson Fields, Petitioner v Illinois

498 US 994, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 182, 111 S Ct 227, 111 S Ct 228.

No. 90-5068. Clara Winston, Petitioner v Mitchell Kossoff

498 US 994, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

No. 90-5070. Daries Sherrills, Petitioner v Norris McMackin, Warden

498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 860, 112 L Ed 2d 129, 111 S Ct 164.

No. 90-5076. Jay Street, Petitioner v Dale Foltz, Warden

498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 860, 112 L Ed 2d 130, 111 S Ct 165.

No. 90-5095. Morris May, Petitioner v Federal Communications Commission

498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 861, 112 L Ed 2d 132, 111 S Ct 167.

No. 90-5098. Leonida Lidman, Petitioner v Newark Redevelopment and Housing Authority, et al.

498 US 995, 112 L Ed 2d 555, 111 S Ct 547.

November 26, 1990. The petition for rehearing is denied. Justice

Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 861, 112 L Ed 2d 132, 111 S Ct 168.

No. 90-5109. William Franklin, Petitioner v Illinois

498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 182, 111 S Ct 228.

No. 90-5125. Martin Neil Brawley, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 862, 112 L Ed 2d 135, 111 S Ct 170.

No. 90-5131. Ben W. Allustiarte and Linda M. Allustiarte, Petitioners v W. Austin Cooper

498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 863, 112 L Ed 2d 136, 111 S Ct 171.

No. 90-5148. Anthony Green, Petitioner v South Carolina

498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 183, 111 S Ct 229.

No. 90-5151. John Schmitz, Petitioner v Lawrence Gibbs

498 US 995, 112 L Ed 2d 556, 111 S Ct 548.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 864, 112 L Ed 2d 138, 111 S Ct 173.

No. 90-5155. Rhonald Beverly, et ux., Petitioners v United States

498 US 995, 112 L Ed 2d 556, 111 S Ct 548, reh den (US) 121 L Ed 2d 576, 113 S Ct 648.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 864, 112 L Ed 2d 138, 111 S Ct 174.

No. 90-5159. Leroy Wafer, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 995, 112 L Ed 2d 556, 111 S Ct 549.

November 26, 1990. the petition of rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 864, 112 L Ed 2d 138, 111 S Ct 174.

No. 90-5200. Irene Petrarca, Petitioner v Romeo S. Picerne, Jr., et al.

498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 866, 112 L Ed 2d 142, 111 S Ct 179.

No. 90-5214. Qusan Qadhafi, Petitioner v Virginia

498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 866, 112 L Ed 2d 143, 111 S Ct 180.

No. 90-5217. John Hightower, Petitioner v Georgia

498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 882, 112 L Ed 2d 184, 111 S Ct 230.

No. 90-5236. Varnall Weeks, Petitioner v Alabama

498 US 995, 112 L Ed 2d 557, 111 S Ct 549.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 882, 112 L Ed 2d 184, 111 S Ct 230.

No. 90-5240. Terry Michael Turner, Petitioner v Harold Falk, Director, Hawaii Department of Corrections, et al.

498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 867, 112 L Ed 2d 146, 111 S Ct 183.

No. 90-5244. Bert Le Ward, Petitioner v Guy H. Hunt, et al.

498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

No. 90-5245. Vincent X. Lee, Petitioner v William M. Armontrout, Warden, et al.

498 US 995, 112 L Ed 2d 557, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice

Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

No. 90-5264. James W. Cotton, Jr., Petitioner v New Mexico

498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 869, 112 L Ed 2d 149, 111 S Ct 186.

No. 90-5267. Makram Tadros, Petitioner v D. Jackson Coleman, et al.

498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 869, 112 L Ed 2d 149, 111 S Ct 186.

No. 90-5307. Clarence Duke McGann, Petitioner v Herbert Biderman, et al.

498 US 995, 112 L Ed 2d 558, 111 S Ct 550.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 871, 112 L Ed 2d 154, 111 S Ct 191.

No. 90-5328. Earl Hawkins, Petitioner v Illinois

498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 182, 111 S Ct 227, 111 S Ct 228.

No. 90-5341. Robert Leppaluoto, et ux., Petitioners v George Nazarian, dba The Law Clinic

498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 872, 112 L Ed 2d 157, 111 S Ct 195.

No. 90-5348. Audrey J. Getrost, Petitioner v United States

498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 873, 112 L Ed 2d 158, 111 S Ct 196.

No. 90-5362. Joanne Rodriguez-Doshi, Petitioner v General Services Administration, et al.

498 US 995, 112 L Ed 2d 558, 111 S Ct 551.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 901, 112 L Ed 2d 217, 111 S Ct 260.

No. 90-5388. Ricardo Beas, Petitioner v California

498 US 995, 112 L Ed 2d 559, 111 S Ct 551.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decison of this petition.

Former Decision, 498 US 874, 112 L Ed 2d 161, 111 S Ct 200.

No. 90-5441. Susan G. Madden, Petitioner v NBD Mortgage Company, et al.

498 US 995, 112 L Ed 2d 559, 111 S Ct 552.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 902, 112 L Ed 2d 220, 111 S Ct 263.

No. 90-5449. Ahsan Mohiuddin, Petitioner v Alabama Department of Industrial Relations and USBI, Co.

498 US 995, 112 L Ed 2d 559, 111 S Ct 552.

November 26, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 902, 112 L Ed 2d 220, 111 S Ct 264.

No. 90-5839 (A-419). Betty Lou Beets, Petitioner v Texas

498 US 996, 112 L Ed 2d 559, 111 S Ct 552.

December 1, 1990. The application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, is denied. The petition for rehearing is denied. Justice Marshall would grant the application for stay of execution.

Former Decision, 498 US 992, 112 L Ed 2d 548, 111 S Ct 538.

No. 90-643. Caroline T. Davis, Petitioner v St. Joe Papermakers Federal Credit Union, et al.

498 US 996, 112 L Ed 2d 559, 111 S Ct 574.

December 3, 1990. The petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 905 F2d 1542.

No. 89-1125. Thorn Apple Valley, Inc., Petitioner v Auto Club Insurance Association

498 US 996, 112 L Ed 2d 559, 111 S Ct 552.

December 3, 1990. On petition for writ of certiorari to the Court of Appeals of Michigan. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Appeals of Michigan for further consideration in light of FMC Corporation v Holliday, 498 US 52, 112 L Ed 2d 356, 111 S Ct 403 (1990).

Same case below, 175 Mich App 412, 438 NW2d 320.

No. 90-308. John C. Pritchard, Petitioner v National Transportation Safety Board

498 US 996, 112 L Ed 2d 560, 111 S Ct 552.

December 3, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of the position asserted by the Solicitor General in his brief for the National Transportation Safety Board filed November 8, 1990.

No. 90-5550. John Byron Cuffle, Petitioner v John Avenenti, et al.

498 US 996, 112 L Ed 2d 560, 111 S Ct 553.

December 3, 1990. On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of the position asserted by the Attorney General of Arizona in his Brief for the Respondents filed November 7, 1990.

Same case below, 904 F2d 40.

No. ——. Robert F. Burson, Jr., Petitioner v Charles A. Moye, Jr., Judge

498 US 996, 112 L Ed 2d 560, 111 S Ct 553.

December 3, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. D-929. In the Matter of Disbarment of Robert E. Brimberry

498 US 996, 112 L Ed 2d 560, 111 S Ct 553.

December 3, 1990. Disbarment order entered.

No. 89-1493. Air Line Pilots Association, International, Petitioner v Joseph E. O'Neill, et al.

498 US 997, 112 L Ed 2d 560, 111 S Ct 553.

December 3, 1990. The motion of Continental Airlines, Inc., for leave to file a brief as amicus curiae is granted.

No. 89-1632. California, Petitioner v Hodari D.

498 US 997, 112 L Ed 2d 561, 111 S Ct 553.

December 3, 1990. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 89-1714. Harriet Pauley, Survivor of John C. Pauley, Petitioner v BethEnergy Mines, Inc., et al.

498 US 997, 112 L Ed 2d 561, 111 S Ct 553.

December 3, 1990. The motion of the Solicitor General to dispense with printing the joint appendix is granted.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 997, 112 L Ed 2d 561, 111 S Ct 554.

December 3, 1990. The motion of Washington Legal Foundation, et al. for leave to file a brief as amici curiae is granted. The motion of Appellate Committee of the California District Attorneys Association for leave to file a brief as amicus curiae is granted.

No. 90-68. Eddie S. Ylst, Warden, Petitioner v Owen Duane Nunnemaker

498 US 997, 112 L Ed 2d 561, 111 S Ct 554.

December 3, 1990. The motion for appointment of counsel is granted, and it is ordered that Juliana Drous, Esq., of San Francisco, California, be appointed to serve as counsel for the respondent in this case.

No. 90-622. Florida, Petitioner v Enio Jimeno, et al.

498 US 997, 112 L Ed 2d 561, 111 S Ct 554.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Florida granted.

Same case below, 564 So 2d 1083.

No. 90-516. Jill S. Kamen, Petitioner v Kemper Financial Services, Inc., et al.

498 US 997, 112 L Ed 2d 561, 111 S Ct 554.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted limited to Question 1 presented by the petition.

Same case below, 908 F2d 1338.

No. 89-7828. Arturo Delgadillo, Petitioner v Texas

498 US 997, 112 L Ed 2d 561, 111 S Ct 554.

December 3, 1990. Petition for

writ of certiorari to the Court of Appeals of Texas, Tenth District, denied.

No. 90-171. James Peter Nalbandian, Petitioner v Superior Court of Arizona

498 US 997, 112 L Ed 2d 562, 111 S Ct 554.

December 3, 1990. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied.

Same case below, 163 Ariz 126, 786 P2d 977.

No. 90-334. James N. Stephens, Petitioner v Secretary, Department of Health and Human Services

No. 90-340. James N. Stephens, Petitioner v Terry S. Coleman, et al.

498 US 998, 112 L Ed 2d 562, 111 S Ct 555.

December 3, 1990. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 901 F2d 1571.

No. 90-409. Boston Ranch Company, et al., Petitioners v Department of the Interior

498 US 998, 112 L Ed 2d 562, 111 S Ct 555.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 814.

No. 90-411. Trinity Industries, Inc., et al., Petitioners v Roderick DeArment, Acting Secretary of Labor

498 US 998, 112 L Ed 2d 562, 111 S Ct 555.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 867.

No. 90-433. Charles W. Butler, Petitioner v Richard Thornburgh, Attorney General of the United States

498 US 998, 112 L Ed 2d 562, 111 S Ct 555.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 900 F2d 871.

No. 90-456. William K. Reilly, Administrator, Environmental Protection Agency, et al., Petitioners v Roberta Delaney, et al.

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 687.

No. 90-461. District of Columbia, et al., Petitioners v Lani Moore, et al.

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 285 App DC 95, 907 F2d 165.

No. 90-557. Michael S. Cardwell, Petitioner v Rockford Memorial Hospital, et al.

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 136 Ill 2d 271, 144 Ill Dec 109, 555 NE2d 6.

No. 90-583. Baxter Chrysler Plymouth, Inc., et al., Petitioners v Iowa

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Iowa denied.

Same case below, 456 NW2d 371.

No. 90-589. Toro Company, Petitioner v Whipple Van Ness Jones, Jr., et ux.

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1542.

No. 90-595. Oscar Walker, Petitioner v Priscilla M. Sawyer

498 US 998, 112 L Ed 2d 563, 111 S Ct 556.

December 3, 1990. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied.

Same case below, 572 A2d 498.

No. 90-598. Robert L. Matthews, et al., Petitioners v Alan Dibona, et al.

498 US 998, 112 L Ed 2d 563, 111 S Ct 557.

December 3, 1990. Petition for

writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

Same case below, 220 Cal App 3d 1329, 269 Cal Rptr 882.

No. 90-603. GTE Corporation, Petitioner v David R. Williams, dba General Telephone

498 US 998, 112 L Ed 2d 564, 111 S Ct 557.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 904 F2d 536.

No. 90-606. Elaine Lee, Petitioner v C. Nguyen, et al.

498 US 999, 112 L Ed 2d 564, 111 S Ct 557.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 898 F2d 156.

No. 90-607. Carl G. Adams, Petitioner v Missouri

498 US 999, 112 L Ed 2d 564, 111 S Ct 557.

December 3, 1990. Petition for writ of certiorari to the Court of Appeals of Missouri, Western District, denied.

Same case below, 791 SW2d 873.

No. 90-613. Black Crystal Company, Inc., Petitioner v First National Bank of Louisville

498 US 999, 112 L Ed 2d 564, 111 S Ct 557, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 802

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 35.

No. 90-614. Daniel J. Probasco, Petitioner v Colorado

498 US 999, 112 L Ed 2d 564, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Colorado denied.

Same case below, 795 P2d 1330.

No. 90-619. Mid-County Future Alternatives Committee and Peter M. Smith, Petitioners v City of Portland, et al.

498 US 999, 112 L Ed 2d 564, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Oregon denied.

Same case below, 310 Or 152, 795 P2d 541.

No. 90-630. Wilbur K. Keating, Executive Officer of the Public Employees' Retirement System, et al., Petitioners v Nevada Employees' Assn., Inc., et al.

498 US 999, 112 L Ed 2d 565, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 903 F2d 1223.

No. 90-650. Ezzat Majd Pour, Petitioner v Mississippi Medical Licensure Board.

498 US 999, 112 L Ed 2d 565, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-657. Kemper Financial Services, Inc., Petitioner v Jill S. Kamen

498 US 999, 112 L Ed 2d 565, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 1338.

No. 90-667. James A. Bringle, et ux., Petitioners v Jule M. Sugarman, Secretary, Washington State Department of Social and Health Services

498 US 999, 112 L Ed 2d 565, 111 S Ct 558.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1488.

No. 90-671. Edward D. Christensen, Petitioner v Brent D. Ward, et al.

498 US 999, 112 L Ed 2d 565, 111 S Ct 559, reh den 498 US 1075, 112 l Ed 2d 863, 111 S Ct 803.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 916 F2d 1462.

No. 90-686. Christian Gospel Church, Inc., Petitioner v City and County of San Francisco

498 US 999, 112 L Ed 2d 565, 111 S Ct 559.

December 3, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 896 F2d 1221.

No. 90-697. Karl C. Mertz, Petitioner v Louis Sullivan, Secretary of Health and Human Services

498 US 999, 112 L Ed 2d 566, 111 S Ct 559.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1543.

No. 90-713. Murray Drabkin, Trustee of Auto-Train Corporation, aka Railway Services Corporation, Petitioner v Alexander Grant & Company, et al.

498 US 999, 112 L Ed 2d 566, 111 S Ct 559.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 348, 905 F2d 453.

No. 90-725. Ella Sumlin, Petitioner v United States

498 US 1000, 112 L Ed 2d 566, 111 S Ct 559.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 1218.

No. 90-5213. Michael Herbert Weaver, Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary

498 US 1000, 112 L Ed 2d 566, 111 S Ct 559.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 90-5290. Terry Keith Arthur, Petitioner v United States

498 US 1000, 112 L Ed 2d 566, 111 S Ct 560.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1140.

No. 90-5334. Raymond Johnson, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 1000, 112 L Ed 2d 566, 111 S Ct 560.

December 3, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 828.

No. 90-5343. Gilberto Medina-Quiroga, Petitioner v United States

498 US 1000, 112 L Ed 2d 567, 111 S Ct 560.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 526.

No. 90-5549. Robert Votteler, Petitioner v United States

498 US 1000, 112 L Ed 2d 567, 111 S Ct 560.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 128.

No. 90-5664. Eddie Edwards, Petitioner v United States

498 US 1000, 112 L Ed 2d 567, 111 S Ct 560.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 897 F2d 445.

No. 90-5676. Stephen G. Ashley, Michael Blackwood, and Ian Williams, Petitioners v United States

498 US 1000, 112 L Ed 2d 567, 111 S Ct 560.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 258, 904 F2d 78.

No. 90-5691. Vernon Brown, Petitioner v Lane McCotter, Secretary, Department of Corrections of New Mexico, et al.

498 US 1000, 112 L Ed 2d 567, 111 S Ct 561, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5815. Lucy Marrero, Petitioner v United States

498 US 1000, 112 L Ed 2d 567, 111 S Ct 561.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 251.

No. 90-5857. Gregory Navarro, Petitioner v United States

498 US 1000, 112 L Ed 2d 568, 111 S Ct 561.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 285 App DC 221, 907 F2d 1227.

No. 90-5862. Johnny E. Harris, Petitioner v Larry W. Huffman, Warden, et al.

498 US 1000, 112 L Ed 2d 568, 111 S Ct 561.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 902 F2d 1565.

No. 90-5896. Michael Terrell, Petitioner v Terry L. Morris, Warden

498 US 1000, 112 L Ed 2d 568, 111 S Ct 561.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 734.

No. 90-5897. Donald Stephen Gittin, Petitioner v James Rowland, Director, California Department of Corrections

498 US 1001, 112 L Ed 2d 568, 111 S Ct 561.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5898. Jerry Young, Petitioner v John R. Patterson, et al.

498 US 1001, 112 L Ed 2d 568, 111 S Ct 562.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 708.

No. 90-5906. William Frank Schlicher, Petitioner v A. Munoz, et al.

498 US 1001, 112 L Ed 2d 568, 111 S Ct 562, reh den 498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-5909. Lawrence Ollivierre, et al., Petitioners v Manuel Lujan, Jr., Secretary of the Interior, et al.

498 US 1001, 112 L Ed 2d 569, 111 S Ct 562.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 907 F2d 143.

No. 90-5922. John Robert Demos, Jr., Petitioner v United States District Court for the Western District of Washington; John Robert Demos, Jr., Petitioner v United States District Court for the Eastern District of Washington; and John Robert Demos, Jr., Petitioner v United States District Court for the Western District of Washington

498 US 1001, 112 L Ed 2d 569, 111 S Ct 562.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5928. Steven M. De Long, Petitioner v American Protective Services, et al.; Steven M. De Long, Petitioner v Michael Hennessey; and Steven M. De Long, Petitioner v Dr. Ruth Mansfield, et al.

498 US 1001, 112 L Ed 2d 569, 111 S Ct 562.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same cases below, 902 F2d 38 (first case) and 912 F2d 1144 (second case).

No. 90-5929. Steven M. De Long, Petitioner v Ruth Mansfied, et al.

498 US 1001, 112 L Ed 2d 569, 111 S Ct 562.

December 3, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-5930. Harold R. Miller, Petitioner v City of Kansas City, Missouri

498 US 1001, 112 L Ed 2d 569, 111 S Ct 563.

December 3, 1990. Petition for writ of certiorari to the Court of Appeals of Missouri, Western District, denied.

Same case below, 789 SW2d 116.

No. 90-5938. Michael Neel Gleason, Petitioner v Wells Stewart, Judge, Harris County, Texas District Court, et al.

498 US 1001, 112 L Ed 2d 569, 111 S Ct 563, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

December 3, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 90-5939. Claude F. Bumpus, Petitioner v Iowa

498 US 1001, 112 L Ed 2d 570, 111 S Ct 563.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Iowa denied.

Same case below, 459 NW2d 619.

No. 90-5940. Charles Edmonson, Petitioner v New York

498 US 1001, 112 L Ed 2d 570, 111 S Ct 563.

December 3, 1990. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 75 NY2d 672, 555 NYS2d 666, 554 NE2d 1254.

No. 90-5942. Robbie J. Hardin, Petitioner v Canteen, Inc.

498 US 1001, 112 L Ed 2d 570, 111 S Ct 563.

December 3, 1990. Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

No. 90-5943. John Robert Demos, Jr., Petitioner v Supreme Court of Washington

498 US 1002, 112 L Ed 2d 570, 111 S Ct 563.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Washington denied.

No. 90-5966. Thomas Jimmie Lightfoot, Petitioner v John Nagle, Warden, et al.

498 US 1002, 112 L Ed 2d 570, 111 S Ct 564.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 909 F2d 1491.

No. 90-5970. Samuel L. Wodke, Petitioner v South Carolina

498 US 1002, 112 L Ed 2d 570, 111 S Ct 564.

December 3, 1990. Petition for writ of certiorari to the Court of Common Pleas, Greenville County, South Carolina, denied.

No. 90-5971. William Cooper, Petitioner v Jim Jones, et al.

498 US 1002, 112 L Ed 2d 570, 111 S Ct 564.

December 3, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 510.

No. 90-5972. Morna Young, Petitioner v Clayton I. Robins, et al.

498 US 1002, 112 L Ed 2d 571, 111 S Ct 564.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5973. Gene Felix Page, Petitioner v Barbara Albertson

498 US 1002, 112 L Ed 2d 571, 111 S Ct 564.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 257.

No. 90-5977. Douglas Rubins, Petitioner v Colorado

498 US 1002, 112 L Ed 2d 571, 111 S Ct 564.

December 3, 1990. Petition for writ of certiorari to the Court of Appeals of Colorado denied.

No. 90-5988. Charles Edward Dean, Petitioner v Stephen Kaiser, et al.

498 US 1002, 112 L Ed 2d 571, 111 S Ct 565.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6014. Charles Perry, Petitioner v United States

498 US 1002, 112 L Ed 2d 571, 111 S Ct 565.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 56.

No. 90-6020. Bernard Joseph Cassidy, Petitioner v Rose, Klein & Marias, et al.

498 US 1002, 112 L Ed 2d 571, 111 S Ct 565, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 38.

No. 90-6031. Robert F. Sowell, Petitioner v Michael T. Maloney, Deputy Commissioner, Massachusetts Department of Correction

498 US 1002, 112 L Ed 2d 572, 111 S Ct 565, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

No. 90-6053. Van Yuill, Petitioner v United States

498 US 1002, 112 L Ed 2d 572, 111 S Ct 565.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 259.

No. 90-6054. Merle Kinder, Petitioner v Margaret Sandberg, et al.

498 US 1002, 112 L Ed 2d 572, 111 S Ct 565, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 973.

No. 90-6067. Harry Robert McDonald, Petitioner v United States

498 US 1002, 112 L Ed 2d 572, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 905 F2d 871.

No. 90-6075. Adam Edward Quarles, Petitioner v United States

498 US 1002, 112 L Ed 2d 572, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 727.

No. 90-6091. Samuel Lee Thompson, Petitioner v United States

498 US 1002, 112 L Ed 2d 572, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-6093. Willie Rucker, Petitioner v United States

498 US 1003, 112 L Ed 2d 572, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Sixth Circuit denied.

Same case below, 912 F2d 466.

No. 90-6098. Dennis Jake Lunsford and Phillip Douglas Brewer, Petitioners v United States

498 US 1003, 112 L Ed 2d 573, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1468.

No. 90-6100. Kelly Hostetler, Petitioner v United States

498 US 1003, 112 L Ed 2d 573, 111 S Ct 566.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6103. Edward Lyle Hall, Petitioner v Michael D. Parsons, Warden

498 US 1003, 112 L Ed 2d 573, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6121. Curtis Hutson, Petitioner v United States

498 US 1003, 112 L Ed 2d 573, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6122. Benjamin Maduka, Petitioner v United States

498 US 1003, 112 L Ed 2d 573, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1492.

No. 90-6132. James Thomas Donnelly, Petitioner v United States

498 US 1003, 112 L Ed 2d 573, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1140.

No. 90-6142. Travis Jerome Robinson, Petitioner v United States

498 US 1003, 112 L Ed 2d 574, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 692.

No. 90-357. Peter D. Peterson, et al., Petitioners v Department of the Interior, et al.

498 US 1003, 112 L Ed 2d 574, 111 S Ct 567.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 899 F2d 799.

No. 90-621. Ronald D. Castille, District Attorney of Philadelphia County, et al., Petitioners v William Howard Harrison

498 US 1003, 112 L Ed 2d 574, 111 S Ct 568.

December 3, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 84.

No. 90-627. Pasquale Acierno, Petitioner v Michael Cunningham, Warden, New Hampshire State Prison

498 US 1003, 112 L Ed 2d 574, 111 S Ct 568.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

No. 90-714. Ritaellen M. Murphy, et al., Petitioners v Richard M. Ragsdale, et al.

498 US 1003, 112 L Ed 2d 574, 111 S Ct 568.

December 3, 1990. The petition for a writ of certiorari before judgment is denied.

No. 90-5530. Donny Joel Harvey, Petitioner v United States

498 US 1003, 112 L Ed 2d 574, 111 S Ct 568.

December 3, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White would grant certiorari.

Same case below, 897 F2d 1300.

No. 90-5774. Andrew Edward Robertson, Petitioner v California

498 US 1004, 112 L Ed 2d 575, 111 S Ct 568.

December 3, 1990. The petition for a writ of certiorari to the Supreme Court of California is denied.

Justice Blackmun, with whom Justice Marshall joins, dissenting.

I would grant the petition for certiorari to determine whether petitioner's capital sentence was imposed in violation of the Eighth and Fourteenth Amendments.

In 1978, a California jury convicted petitioner Andrew Edward Robertson on two counts of first-degree murder and sentenced him to death. On appeal, the Supreme Court of California reversed that judgment as to the penalty. People v Robertson, 33 Cal 3d 21, 655 P2d 279 (1982). The second sentencing proceeding was assigned to Judge Roy E. Chapman. Robertson waived his right to be sentenced by a jury, and Judge Chapman sat as trier of fact during the second penalty phase.

Robertson introduced extensive evidence in mitigation. Among this was the testimony of his mother and sister concerning Robertson's difficult childhood, during which he allegedly suffered abuse at the hands of his father and stepfather. Through these witnesses, Robertson presented evidence that he had had developmental difficulties as a young child and was slow to walk and talk; that his parents were divorced when he was young; that his father subsequently had kidnaped him; that, upon being returned from the kidnaping, he had been cared for by a disturbed mother and a strict grandmother; and that at age nine he had been diagnosed as suffering from mild mental retardation with possible brain damage. See People v Robertson, 48 Cal 3d 18, 32, 767 P2d 1109, 1114, cert denied, 493 US 879, 107 L Ed 2d 169, 110 S Ct 216 (1989). Robertson, however, was again sentenced to death, and the California Supreme Court, by a divided vote, affirmed. 48 Cal 3d, at 64, 767 P2d, at 1136.

In December 1989, Robertson's counsel for the first time learned that Judge Chapman, prior to his going on the bench, had represented Robertson's mother, Lillian Goodin, in her divorce from Robertson's stepfather. App D to Brief in Opposition 1. The divorce proceeding was initiated by Robertson's stepfather in 1963 and involved extensive allegations by both parties of domestic violence and child abuse. In March 1963, Judge Chapman, then Lillian Goodin's attorney, sought a temporary restraining order agianst Robertson's stepfather, prohibiting him from "threatening, molesting, injuring, harassing, or annoying [Goodin] and [Goodin's] children." App C to Brief in Opposition 4. In support of the request for a temporary restraining order, Robertson's mother executed a declaration attesting that Robertson's stepfather "has struck and beat [Goodin], the minor child of [Goodin and the stepfather], and [Goodin's] children by a prior marriage." Id., at 3. Judge Chapman withdrew from his representation of Robertson's mother on November 16, 1967. When interviewed by Robertson's counsel in 1989, Judge Chapman acknowledged that "the court documents demonstrated that he had represented" Goodin, but stated that he had no present recollection of the divorce proceeding, and that he believed that he had no independent recollection of them at the time of Robertson's sentencing. App D to Brief in Opposition 2.

Immediately upon learing of the past representation, Robertson filed a petition for a writ of habeas corpus in state court. After the California Supreme Court denied Robertson's petition, he filed in this Court a petition for a writ of certiorari. I would grant that petition.

"A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 US 133, 136, 99 L Ed 942, 75 S Ct 623 (1955); see also Ward v Village of Monroeville, 409 US 57, 34 L Ed 2d 267, 93 S Ct 80 (1972). The entitlement to an impartial tribunal applies to the sentencing phase of a criminal proceeding as well as to the guilt phase. See Witherspoon v Illinois, 391 US 510, 518, 20 L Ed 2d 776, 88 S Ct 1770 (1968). Due process demands more than that the sentencer actually *be* impartial; rather, " 'justice must satisfy the appearance of justice.' " In re Murchison, 349 US, at 136, 99 L Ed 942, 75 S Ct 623, quoting Offutt v United States, 348 US 11, 14, 99 L Ed 11, 75 S Ct 11 (1954); see also In re Murchison, 349 US, at 136, 99 L Ed 942, 75 S Ct 623 ("[O]ur system of law has always endeavored to prevent even the probability of unfairness"); Mayberry v Pennsylvania, 400 US 455, 469, 27 L Ed 2d 532, 91 S Ct 499 (1971) (Harlan, J., concurring) ("[T]he appearance of evenhanded justice . . . is at the core of due process"). The risk that Judge Chapman may have brought to bear on his decision specific information about Robertson not presented as evidence in the sentencing proceeding is too great in this case to satisfy the demands of the Due Process Clause. See In re Murchison, 349 US, at 136, 99 L Ed 942, 75 S Ct 623 ("Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties").

Moreover, the Fourteenth Amendment prohibits consideration during the sentencing phase of evidence that the defendant has not had an opportunity to rebut. Consequently, in Gardner v Florida, 430 US 349, 358, 51 L Ed 2d 393, 97 S Ct 1197 (1977) (plurality opinion), the Court rejected as unconstitutional a "capital sentencing procedure which permits a trial judge to impose the death sentence on the basis of confidential information which is not disclosed to the defendant or his counsel." See also Booth v Maryland, 482 US 496, 506-507, 96 L Ed 2d 440, 107 S Ct 2529 (1987).

In light of the stark finality of the death sentence, the importance of procedural safeguards in capital-sentencing proceedings cannot be overstated. "Because sentences of death are 'qualitatively different' from prison sentences, this Court has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible that the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v Oklahoma, 455 US 104, 117-118, 71 L Ed 2d 1, 102 S Ct 869 (1982) (citation omitted) (O'Connor, J. concurring), see also Saffle v Parks, 494 US 484, 492-493, 108 L Ed 2d 415, 110 S Ct 1257 (1990); California v Ramos, 463 US 992, 77 L Ed 2d 1171, 103 S Ct 3446 (1983).

The State argues that no constitutional violation occurred in this case because Judge Chapman did not recall, at the time of the sentencing phase, that he had represented Robertson's mother 11 years before. I find it to be somewhat incredible that a competent and responsible attorney could forget, after only 11 years, a client whom he had represented over a 4-year period during acrimonious divorce litigation. Judge Chapman's failure to remember his representation of Robertson's mother is particularly implausible because she testified during the sentencing proceedings concerning the very acts of abuse that formed the basis of the motion for a temporary restraining order that Judge Chapman filed when he was her counsel.

Moreover, the fairness of these capital sentencing proceedings may reasonably be questioned regardless of whether Judge Chapman had independent recollection of his prior representation of Robertson's mother. California requires that a judge disqualify himself if "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Cal Civ Proc Code Ann § 170.1(a)(6)(C) (West Supp 1990). See 28 USC § 455(a) [28 USCS § 455(a)], which similarly proscribes the participation by a judge of the United States "in any proceeding in which his impartiality might reasonably be questioned." Knowledge of the disqualifying circumstance is not an element of either statute. See, e.g., Liljeberg v Health Services Acquisition Corp. 486 US 847, 860-861, 100 L Ed 2d 855, 108 S Ct 2194 (1988), quoting 796 F2d 796, 802 (CA5 1986) ("'Under section 455(a) . . . recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge'").

Finally, the Eighth Amendment safeguards the capital defendant against the mere risk that the death sentence will be imposed arbitrarily and capriciously. "A constant theme of our cases . . . has been emphasis on procedural protections that are intended to ensure that the death penalty will be imposed in a consistent, rational manner." Barclay v Florida, 463 US 939, 960, 77 L Ed 2d 1134, 103 S Ct 3418 (1983) (Stevens, J., concurring in judgment); see also Godfrey v Georgia, 446 US 420, 427, 64 L Ed 2d 398. 100 S Ct 1759 (1980) (plurality opinion) ("[T]he penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner").

Accordingly, I dissent from the denial of the petition for certiorari.

No. 90-5887. Homer B. Teel, Petitioner v Tennessee

498 US 1007, 112 L Ed 2d 577, 111 S Ct 571.

December 3, 1990. The petition for a writ of certiorari to the Supreme Court of Tennessee, Middle Division, is denied.

Same case below, 793 SW2d 236.

Justice White, with whom Justice Marshall joins, dissenting.

This case presents the question whether harmless-error analysis applies when a jury is not instructed on an essential element of the offense. Petitioner was convicted of first-degree murder for the rape and killing of Tara Stowe. During the guilt phase, the trial court charged the jury as to both premeditated murder and felony murder yet failed to give a definition of rape under state law. The jury returned a general verdict of quilty. On appeal, the Tennessee Supreme Court held that it was error to omit a definition of the felony alleged to support first-degree murder. 793 SW2d 236, 249 (1990). The court further held that the omitted charge was so "fundamental in nature" that petitioner's failure to request a definition of rape at trial did not preclude a finding of error. Id., at 249. After noting that "[t]he law is unsettled as to whether harmless error analysis is available when a trial court fails to instruct on an essential element of an offense," the court concluded that the omission of a rape instruction here was harmless beyond a reasonable doubt. Id., at 249-250. The court reasoned that the evidence was sufficient to sustain a conviction on the properly instructed charge of premeditated murder and that the same jury received a complete instruction as to the elements of rape as an aggravating circumstance during the sentencing phase. Id., at 250. Having rejected this and numerous other contentions, the court affirmed the conviction and death sentence.

As the Tennessee Supreme Court noted, a conflict of authority exists concerning the availability of harmless-error analysis in this situation. Several Courts of Appeal have held that error resulting from a failure to give proper instructions on the essential elements of an offense cannot be harmless. Hoover v Garfield Heights Municipal Court, 802 F2d 168, 175-179 (CA6 1986); United States v Howard, 506 F2d 1131, 1133-1134 (CA2 1974); United States v Gaither, 440 F2d 262, 264 (CADC 1971). Others have held that harmless-error analysis can apply. Redding v Benson, 739 F2d 1360 (CA8 1984), cert denied 469 US 1222, 84 L Ed 2d 352, 105 S Ct 1210 (1985); Bell v Watkins, 692 F2d 999, 1004 (CA5 1982). The depth of this conflict underscores the importance of the question. Both considerations counsel for a grant of certiorari.

No. 90-5948. Wayne Kenneth Delong, Petitioner v Charles E. Thompson, Warden

498 US 1008, 112 L Ed 2d 578, 111 S Ct 571.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Virginia denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5969. Doyle Lee Hamm, Petitioner v Alabama

498 US 1008, 112 L Ed 2d 579, 111 S Ct 572.

December 3, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 564 So 2d 469.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5246. In Re David Bentley, Petitioner

498 US 997, 112 L Ed 2d 579, 111 S Ct 572.

December 3, 1990. The petition for writ of mandamus is denied.

No. 90-5951. In Re Kevin Williams, Petitioner

498 US 997, 112 L Ed 2d 579, 111 S Ct 572.

December 3, 1990. The petition for writ of mandamus is denied.

No. 90-5533. William Schlicher, Petitioner v Fritz Young, et al.

498 US 1008, 112 L Ed 2d 579, 111 S Ct 572.

December 3, 1990. The petition for rehearing is denied.

Former Decision, 498 US 923, 112 L Ed 2d 255, 111 S Ct 302.

No. 89-7336. Stanley Mose Cardine, Petitioner v Al Parke, Warden

498 US 1008, 112 L Ed 2d 579, 111 S Ct 572.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 827, 112 L Ed 2d 56, 111 S Ct 83.

No. 89-7777. Chris Lonchar Kellogg, as Next Friend to Larry Grant Lonchar, Petitioner v Walter Zant, Warden

498 US 1008, 112 L Ed 2d 579, 111 S Ct 573.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 890, 112 L Ed 2d 191, 111 S Ct 231.

No. 90-220. Rudolph De Souza, Petitioner v Wanda L. Schultz

498 US 1008, 112 L Ed 2d 579, 111 S Ct 573.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 896, 112 L Ed 2d 206, 111 S Ct 247.

No. 90-5304. Ronald Chandler, Petitioner v Carl White, et al.

498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 871, 112 L Ed 2d 154, 111 S Ct 191.

No. 90-5437. George Balmer and Margaret Balmer, Petitioners v State Farm Fire and Casualty Company

498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 902, 112 L Ed 2d 220, 111 S Ct 263.

No. 90-5469. Jerry C. Moore, Petitioner v Stewart Title of California and State Savings and Loan

498 US 1008, 112 L Ed 2d 580, 111 S Ct 573.

December 3, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision or this petition.

Former Decision, 498 US 903, 112 L Ed 2d 222, 111 S Ct 265.

No. 90-184. In Re Harold G. Royce, Petitioner

498 US 1009, 112 L Ed 2d 580, 111 S Ct 573.

December 3, 1990. The motion of petitioner for leave to proceed further herein in forma pauperis is granted. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Former Decision, 498 US 806, 112 L Ed 2d 196, 111 S Ct 236.

No. 90-335. Gerald M. Sparks, Petitioner v Character and Fitness Committee of Kentucky

498 US 1009, 112 L Ed 2d 580, 111 S Ct 574.

December 3, 1990. The motion of petitioner for leave to proceed further herein in forma pauperis is granted. The petition for rehearing is denied.

Former Decision, 498 US 920, 112 L Ed 2d 250, 111 S Ct 296.

No. 89-1261. Spencer I. Jordan, Petitioner v United States

498 US 1009, 112 L Ed 2d 580, 111 S Ct 575.

December 10, 1990. On petition for writ of certiorari to the United States Court of Military Appeals. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Military Appeals for further consideration in light of Minnick v Mississippi, 498 US 146, 112 L Ed 2d 489, 111 S Ct 486 (1990).

Same case below, 29 MJ 177.

No. 90-663. Frederick M. Dever, Jr., Petitioner v Ohio

498 US 1009, 112 L Ed 2d 581, 111 S Ct 575.

December 10, 1990. On petition for writ of certiorari to the Court of Appeals of Ohio, Hamilton County. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Appeals of Ohio, Hamilton County, for further consideration in light of Idaho v Wright, 497 US 805, 111 L Ed 2d 638, 110 S Ct 3139 (1990).

No. ——. Ralph J. Maisano, III, et al., Petitioners v United States

498 US 1009, 112 L Ed 2d 581, 111 S Ct 575.

December 10, 1990. The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. A-368. Barry Joe Smith, Applicant v United States

498 US 1009, 112 L Ed 2d 581, 111 S Ct 575.

December 10, 1990. The application for release pending appeal, addressed to Justice Marshall and referred to the Court, is denied.

No. A-422 (90-849). County of Los Angeles, et al., Petitioners v Yolanda Garza, et al.

498 US 1009, 112 L Ed 2d 581, 111 S Ct 578.

December 10. 1990. The application to reinstate the stay of a special election ordered by the United States District Court for the Central District of Caifornia, presented to Justice O'Connor, and by her referred to the Court, is denied.

No. D-909. In the Matter of Disbarment of Clyde P. Martin, Jr.

498 US 1009, 112 L Ed 2d 581, 111 S Ct 575.

December 10, 1990. Disbarment order entered.

No. D-911. In the Matter of Disbarment of John M. Badalian

498 US 1009, 112 L Ed 2d 581, 111 S Ct 575.

December 10. 1990. Disbarment order entered.

No. D-931. In the Matter of Disbarment of James P. Ryan

498 US 1009, 112 L Ed 2d 581, 111 S Ct 576.

December 10, 1990. Disbarment order entered.

No. D-936. In the Matter of Disbarment of David Phillip Feldman

498 US 1010, 112 L Ed 2d 582, 111 S Ct 576.

December 10, 1990. Disbarment order entered.

No. D-937. In the Matter of Disbarment of William Alan Deam

498 US 1010, 112 L Ed 2d 582, 111 S Ct 576.

December 10, 1990. Disbarment order entered.

No. D-955. In the Matter of Disbarment of Kenneth E. Bruce

498 US 1010, 112 L Ed 2d 582, 111 S Ct 576.

December 10, 1990. It is order that Kenneth E. Bruce, of Scarsdale, New York, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-956. In the Matter of Disbarment of Stephen Wallace Toothaker

498 US 1010, 112 L Ed 2d 582, 111 S Ct 576.

December 10, 1990. It is ordered that Stephen Wallace Toothaker, of Miami, Florida, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-957. In the Matter of Disbarment of Albert Francis Pennisi

498 US 1010, 112 L Ed 2d 582, 111 S Ct 576.

December 10, 1990. It is ordered that Albert Francis Pennisi, of Kew Gardens, New York, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Original. State of Texas, Plaintiff v State of New Mexico

498 US 1010, 112 L Ed 2d 582, 111 S Ct 577.

December 10, 1990. The motion of the River Master for approval of fees and expenses is granted, and the River Master is awarded $2,638.52 for the period July 1 through September 30, 1990, to be paid equally by the parties.

No. 89-1322. Oklahoma Tax Commission, Petitioner v Citizen Band Potawatomi Indian Tribe of Oklahoma

498 US 1010, 112 L Ed 2d 582, 111 S Ct 577.

December 10, 1990. The motion of

the Solicitor General for leave to participate in oral agrument as amicus curiae and for divided argument is granted.

No. 89-7376. Pearly L. Wilson, Petitioner v Richard Seiter, et al.

498 US 1010, 112 L Ed 2d 583, 111 S Ct 577.

December 10, 1990. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 90-79. Richard B. Kay, Petitioner v Bremer Ehrler and Kentucky Board of Elections

498 US 1010, 112 L Ed 2d 583, 111 S Ct 577.

December 10, 1990. The motion of the Solicitor General for leave to participate in oral agrument as amicus curiae and for divided argument is granted.

No. 89-1493. Air Line Pilots Association, International, Petitioner v Joseph E. O'Neill, et al.

498 US 1011, 112 L Ed 2d 583, 111 S Ct 577.

December 10, 1990. The motion of the Solicitor General for leave to participate in oral agrument as amicus curiae and for divided argument is denied.

No. 90-18. Robert D. Gilmer, Petitioner v Interstate/Johnson Lane Corporation

498 US 1011, 112 L Ed 2d 583, 111 S Ct 578.

December 10, 1990. The motion of respondent to strike portions of amici curiae briefs is denied.

No. 90-324. Brown Group, Inc., dba Brown Shoe Company, Inc., Petitioner v Kenneth G. Hicks

498 US 1011, 112 L Ed 2d 583, 111 S Ct 578.

December 10, 1990. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-634. Dan Cohen, Petitioner v Cowles Media Company, dba Minneapolis Star and Tribune Company, et al.

498 US 1011, 112 L Ed 2d 583, 111 S Ct 578.

December 10, 1990. Petition for writ of certiorari to the Supreme Court of Minnesota granted limited to Question 1 presented by the petition.

Same case below, 457 NW2d 199.

No. 90-5635. John J. McCarthy, Petitioner v George Bronson, Warden, et al.

498 US 1011, 112 L Ed 2d 584, 111 S Ct 578.

December 10, 1990. The motion of petitioner for leave to proceed in forma pauperis is granted. The petition for writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to the following question: "Whether 28 USC § 636(b)(1)(B) [28 USCS § 636(b)(1)(B)], which authorizes a district court to refer, without the parties' consent, to a magistrate for recommended findings a prisoner petition that challenges 'conditions of confinement' applies to cases challenging a specific episode of allegedly unconstitutional conduct rather than continuing prison conditions."

Same case below, 906 F2d 835.

No. 90-5744. Richard L. Chapman, John M. Schoenecker, and Patrick Brumm, Petitioners v United States

498 US 1011, 112 L Ed 2d 584, 111 S Ct 579.

December 10, 1990. Motion of petitioners for leave to proceed in forma pauperis and petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted.

Same case below, 908 F2d 1312.

No. 89-1373. Arthur Lister, Petitioner v H. Allan Stark, et al.

498 US 1011, 112 L Ed 2d 584, 111 S Ct 579.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 890 F2d 941.

No. 89-7863. Johnny Robert Lopez, Petitioner v California

498 US 1011, 112 L Ed 2d 584, 111 S Ct 579.

December 10, 1990. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

No. 90-246. James K. Dorris, Petitioner v United States

498 US 1012, 112 L Ed 2d 584, 111 S Ct 579.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 1562.

No. 90-328. Bodimetric Health Services, Inc., et al., Petitioners v Aetna Life & Casualty, et al.

498 US 1012, 112 L Ed 2d 584, 111 S Ct 579.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 903 F2d 480.

No. 90-372. Robert Gigante, Petitioner v Runship, Ltd., et al.

498 US 1012, 112 L Ed 2d 585, 111 S Ct 579.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 694.

No. 90-396. William Edgar Hawkins, Petitioner v Alabama

498 US 1012, 112 L Ed 2d 585, 111 S Ct 580.

December 10, 1990. Petition for writ of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 565 So 2d 1193.

No. 90-457. Adele Graham, Individually and as Representative of a Class of Persons Similarly Situated, Petitioner v New York Department of Civil Service, et al.

498 US 1012, 112 L Ed 2d 585, 111 S Ct 580.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 324.

No. 90-463. Betty D. McCall, Petitioner v United States

498 US 1012, 112 L Ed 2d 585, 111 S Ct 580.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 901 F2d 548.

No. 90-530. Round Table Pizza, Inc., et al., Petitioners v William R. Larson

498 US 1012, 112 L Ed 2d 585, 111 S Ct 580.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 1363.

No. 90-543. Joseph R. Giannini, Petitioner v Manuel L. Real, Chief Judge, United States District Court for the Central District of California, et al.

498 US 1012, 112 L Ed 2d 585, 111 S Ct 580, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1031.

December 10, 1990. Petition for writ of certiorari to the United

States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 354.

No. 90-628. Marie M. McMahon, Petitioner v Charles G. Aschmann, Jr.

498 US 1012, 112 L Ed 2d 586, 111 S Ct 580.

December 10, 1990. Petition for writ of certiorari to the Supreme Court of Appeals of West Virginia denied.

No. 90-635. Navajo Tax Commission, Petitioner v Pittsburgh & Midway Coal Mining Company

498 US 1012, 112 L Ed 2d 586, 111 S Ct 581.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 909 F2d 1387.

No. 90-637. Edith Mae Gracey, Petitioner v Frederick Reigle

498 US 1012, 112 L Ed 2d 586, 111 S Ct 581.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 242.

No. 90-638. John Babigian, Petitioner v Association of the Bar of the City of New York, et al.

498 US 1012, 112 L Ed 2d 586, 111 S Ct 581.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 912 F2d 462.

No. 90-639. John C. Reusch, Petitioner v Seaboard System Railroad Company

498 US 1012, 112 L Ed 2d 586, 111 S Ct 581.

December 10, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 566 So 2d 489.

No. 90-640. Mary Jane Wickman, Petitioner v Northwestern National Life Insurance Company

498 US 1013, 112 L Ed 2d 586, 111 S Ct 581.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 908 F2d 1077.

No. 90-665. Benefit Trust Life Insurance Company, Petitioner v Daniel Kunin

498 US 1013, 112 L Ed 2d 587, 111 S Ct 581, reh den 498 US 1074, 112 L Ed 2d 863, 111 S Ct 803.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 910 F2d 534.

No. 90-668. Edward Halas, Petitioner v Donald Quigg, Commissioner of Patents

498 US 1013, 112 L Ed 2d 587, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 914 F2d 270.

No. 90-677. Hans Walter Roeck, Petitioner v United States

498 US 1013, 112 L Ed 2d 587, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 1419.

No. 90-684. Clawzelle Wiggins, Petitioner v Chrysler Corporation, et al.

498 US 1013, 112 L Ed 2d 587, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 1539.

No. 90-708. Andrew Anderson, Petitioner v Kentucky

498 US 1013, 112 L Ed 2d 587, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the Court of Appeals of Kentucky denied.

No. 90-709. George B. Soliman, dba Sphinx & Pyramids Properties & Investments, Inc., Petitioner v Eddins Enterprises, Inc.

498 US 1013, 112 L Ed 2d 587, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the Court of Appeals of Texas, Fifth District, denied.

No. 90-743. Edith Robinson, Petitioner v Anthony M. Frank, Postmaster General of the United States, et al.

498 US 1013, 112 L Ed 2d 588, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-753. Ronald Newell Land, Petitioner v United States

498 US 1013, 112 L Ed 2d 588, 111 S Ct 582.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 904 F2d 714.

No. 90-5032. Alton D. Cobb, Petitioner v City of Detroit Common Council, et al.

498 US 1013, 112 L Ed 2d 588, 111 S Ct 583.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 897 F2d 529.

No. 90-5079. Allen Porter, Petitioner v United States

498 US 1013, 112 L Ed 2d 588, 111 S Ct 583.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 895 F2d 1415.

No. 90-5099. Luis Ruiz and Henry Diaz, Petitioners v United States

498 US 1013, 112 L Ed 2d 588, 111 S Ct 583.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 256, 900 F2d 257.

No. 90-5352. Michael Sindram, Petitioner v Maryland

498 US 1013, 112 L Ed 2d 588, 111 S Ct 583.

December 10, 1990. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

No. 90-5433. George Sabat Brooks, Jr., Petitioner v United States

498 US 1013, 112 L Ed 2d 588, 111 S Ct 583.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-5439. Buford L. Gregory, Petitioner v California

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

Same case below, 217 Cal App 3d 665, 266 Cal Rptr 527.

No. 90-5492. Patrick M. Cannon, Petitioner v United States

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 903 F2d 849.

No. 90-5576. Michelle Rumble, Petitioner v Don Smith, Warden

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 176.

No. 90-5589. Joe Louis Lesure, Petitioner v Illinois

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the Appellate Court of Illinois, Second District, denied.

Same case below, 195 Ill App 3d 437, 142 Ill Dec 13, 552 NE2d 363.

No. 90-5594. Elmer Winters, Petitioner v Gerald McFaul, et al.

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 1539.

No. 90-5724. Mary Rose Lockett, Petitioner v Michael P.W. Stone, Secretary of the Army, et al.

498 US 1014, 112 L Ed 2d 589, 111 S Ct 584.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 700.

No. 90-5787. Bobbi L. Brand, Petitioner v United States

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 31.

No. 90-5800. Robert Eaton, Petitioner v United States

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 979.

No. 90-5912. Ricky Ricardo Harris, Petitioner v John M. Greacen, et al.

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 722.

No. 90-5944. Armando Cordoba, Petitioner v Michael Hanrahan

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 910 F2d 691.

No. 90-5964. Robert Earl Cherry, Petitioner v James Rowland, et al.

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-5965. Fred A. Whitaker, Petitioner v Superior Court, Alameda County, California, et al.

498 US 1014, 112 L Ed 2d 590, 111 S Ct 585.

December 10, 1990. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-5981. Robert L. Endres, Petitioner v Bill Armontrout, et al.

498 US 1014, 112 L Ed 2d 590, 111 S Ct 586, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 508.

No. 90-5983. Kathryn S. Martin, Petitioner v United States Department of Labor, Employment Standards Administration Office of Worker's Compensation

498 US 1014, 112 L Ed 2d 591, 111 S Ct 586, reh den 498 US 1060, 112 L Ed 2d 794, 111 S Ct 774.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 693.

No. 90-5991. Omar G. Rodriguez-Diaz, Petitioner v Florida, et al.

498 US 1015, 112 L Ed 2d 591, 111 S Ct 586, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-5992. Darrell Lamont Bailey, Petitioner v United States District Court for the Northern District of California

498 US 1015, 112 L Ed 2d 591, 111 S Ct 586.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6000. Daniel Lee Holbert, Petitioner v Norris W. McMackin, Warden

498 US 1015, 112 L Ed 2d 591, 111 S Ct 586.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6004. Bobby Foxx, Petitioner v J. Irving Baines, et al.

498 US 1015, 112 L Ed 2d 591, 111 S Ct 586.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 1137.

No. 90-6006. George L. Wortham, Petitioner v CHR. Hansen Laboratory, Incorporated

498 US 1015, 112 L Ed 2d 591, 111 S Ct 587.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-6008. John Robert Demos, Jr., Petitioner v United States District Court for the Western District of Washington (three cases)

498 US 1015, 112 L Ed 2d 592, 111 S Ct 587.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6037. Maurice S. McGee, Petitioner v Randall Division of Textron, Inc., of Grenada, Mississippi

498 US 1015, 112 L Ed 2d 592, 111 S Ct 587, reh den 498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 1467.

No. 90-6038. Jackie Haynes, Petitioner v Larry Burton, Warden

498 US 1015, 112 L Ed 2d 592, 111 S Ct 587.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1143.

No. 90-6060. Tyrone Anderson, Petitioner v Ohio

498 US 1015, 112 L Ed 2d 592, 111 S Ct 587.

December 10, 1990. Petition for writ of certiorari to the Court of Appeals of Ohio, Summit County, denied.

No. 90-6092. Joe Robertson, Petitioner v United States

498 US 1015, 112 L Ed 2d 592, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 727.

No. 90-6109. Adam Butler, II, Petitioner v United States

498 US 1015, 112 L Ed 2d 592, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 902 F2d 912.

No. 90-6141. Ted A. Lewis, Petitioner v United States

498 US 1015, 112 L Ed 2d 592, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6145. Joseph M. Craveiro, Petitioner v United States

498 US 1015, 112 L Ed 2d 593, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 907 F2d 260.

No. 90-6146. Jesse L. Adams, Petitioner v United States

498 US 1015, 112 L Ed 2d 593, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 914 F2d 1404.

No. 90-6147. Bert Ernest Daby, Petitioner v Robert Erickson

498 US 1015, 112 L Ed 2d 593, 111 S Ct 588.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1579.

No. 90-6163. Chad L. Hughes, Petitioner v United States

498 US 1016, 112 L Ed 2d 593, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 923 F2d 858.

No. 90-6167. Ernest Buck, Petitioner v United States

498 US 1016, 112 L Ed 2d 593, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1576.

No. 90-6170. John Wilson, Petitioner v United States

498 US 1016, 112 L Ed 2d 593, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-6181. Jeremiah Ford, Petitioner v United States

498 US 1016, 112 L Ed 2d 593, 111 S Ct 589.

December 10, 1990. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 696.

No. 90-6182. Donald Jack Priest, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6186. Sotero Quinonez-Ledezma, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6188. Efrain Marmol-Orta, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 589.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 1499.

No. 90-6195. Peter J. Charles, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 590.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-6196. Wayne Anthony Brown, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 590.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 913 F2d 570.

No. 90-6199. Pedro Villagomez-Reyes, Petitioner v United States

498 US 1016, 112 L Ed 2d 594, 111 S Ct 590.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 729.

No. 90-336. W. R. Barker, Superintendent, Columbus County Prison Unit, Brunswick, North Carolina, et al., Petitioners v Wilton Howell

498 US 1016, 112 L Ed 2d 595, 111 S Ct 590.

December 10, 1990. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice White and Justice Kennedy would grant certiorari.

Same case below, 904 F2d 889.

No. 90-455. General Wood Preserving Company, Inc., Petitioner v National Labor Relations Board

498 US 1016, 112 L Ed 2d 595, 111 S Ct 590.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice White would grant certiorari.

Same case below, 905 F2d 803.

No. 90-588. Munters Corporation, Petitioner v Matsui America, Inc.

498 US 1016, 112 L Ed 2d 595, 111 S Ct 591.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice White would grant certiorari.

Same case below, 909 F2d 250.

No. 90-674. International Union of Operating Engineers, Local 406, et al., Petitioners v Robert Guidry

498 US 1016, 112 L Ed 2d 595, 111 S Ct 591.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White would grant certiorari.

Same case below, 907 F2d 1491.

No. 90-5753. Gilberto Martinez, Petitioner v United States

498 US 1017, 112 L Ed 2d 595, 111 S Ct 591.

December 10, 1990. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Justice White would grant certiorari.

Same case below, 905 F2d 709.

No. 90-5941. Michael Dee Mattson, Petitioner v California

498 US 1017, 112 L Ed 2d 595, 111 S Ct 591, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

December 10, 1990. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 826, 268 Cal Rptr 802, 789 P2d 983.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6041. Gregory Lott, Petitioner v Ohio

498 US 1017, 112 L Ed 2d 596, 111 S Ct 591.

December 10, 1990. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 51 Ohio St 3d 160, 555 NE2d 293.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5985. In Re Henry V. Geurin, Petitioner

498 US 1011, 112 L Ed 2d 596, 111 S Ct 592.

December 10, 1990. The petition for writ of mandamus is denied.

No. 90-5993. In Re Lionel E. Cyntje, Petitioner

498 US 1011, 112 L Ed 2d 596, 111 S Ct 592.

December 10, 1990. The petition for writ of mandamus is denied.

No. 90-6011. In Re Clovis Carl Green, Jr., Petitioner

498 US 1011, 112 L Ed 2d 596, 111 S Ct 592.

December 10, 1990. The petition for writ of mandamus is denied.

No. 89-7683. Charles Young, Petitioner v Florida, et al.

498 US 1017, 112 L Ed 2d 596, 111 S Ct 592.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 919, 112 L Ed 2d 247, 111 S Ct 293.

No. 90-346. Toledo Police Patrolman's Association, Local 10, I. U. P. A., et al., Petitioners v City of Toledo, et al.

498 US 1017, 112 L Ed 2d 596, 111 S Ct 592.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 920, 112 L Ed 2d 251, 111 S Ct 297.

No. 90-365. In Re Shahsultan Jaffer, Petitioner

498 US 1017, 112 L Ed 2d 597, 111 S Ct 592.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 937, 112 L Ed 2d 337, 111 S Ct 375.

No. 90-399. Curtis L. Wrenn, Petitioner v United States, et al.

498 US 1017, 112 L Ed 2d 597, 111 S Ct 592.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 921, 112 L Ed 2d 252, 111 S Ct 298.

No. 90-458. Frank J. Camoscio, Petitioner v The Patriot Ledger, et al.

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 942, 112 L Ed 2d 314, 111 S Ct 349.

No. 90-5073. Joseph A. Bettistea, Jr., Petitioner v Michigan

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 942, 112 L Ed 2d 315, 111 S Ct 351.

No. 90-5101. Ernest Porter, Petitioner v Pennsylvania

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 925, 112 L Ed 2d 260, 111 S Ct 307.

No. 90-5266. Douglas James Sisco, Petitioner v County of Los Angeles, et al.

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 922, 112 L Ed 2d 254, 111 S Ct 301.

No. 90-5454. Chester L. Draper, Petitioner v Ohio

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 916, 112 L Ed 2d 261, 111 S Ct 308.

No. 90-5606. William Schlicher, Petitioner v Steven J. Davies, Secretary, Kansas Department of Corrections, et al.

498 US 1017, 112 L Ed 2d 597, 111 S Ct 593.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 945, 112 L Ed 2d 321, 111 S Ct 358.

No. 90-5632. Gary Lee McColpin, Petitioner v Robert T. Stephan

498 US 1017, 112 L Ed 2d 597, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 946, 112 L Ed 2d 322, 111 S Ct 359.

No. 90-5816. In Re James E. Kirschenhunter, Petitioner

498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied.

Former Decision, 498 US 937, 112 L Ed 2d 336, 111 S Ct 374.

No. 89-1964. Menatsagan Melikian and Kambiz Aftassi, Petitioners v Anthony Corradetti, et al.

498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 821, 112 L Ed 2d 43, 111 S Ct 69.

No. 89-7060. Bernard J. Dobranski, Petitioner v Walter Kelly, Superintendent, Attica Correctional Facility

498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 495 US 938, 109 L Ed 2d 515, 110 S Ct 2187.

No. 89-7652. Danny R. Hollingsworth, Petitioner v Supreme Court of Nevada

498 US 1017, 112 L Ed 2d 598, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 834, 112 L Ed 2d 72, 111 S Ct 101.

No. 90-5172. Jasper Buchanan, Petitioner v T. Travis Medlock, et al.

498 US 1018, 112 L Ed 2d 598, 111 S Ct 594.

December 10, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 864, 112 L Ed 2d 140, 111 S Ct 176.

No. 90-5384. Doris East, Petitioner v John B. Holmes, Jr.

498 US 1018, 112 L Ed 2d 598, 111 S Ct 595.

December 10, 1990. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 874, 112 L Ed 2d 161, 111 S Ct 200.

No. 89-7043. Harvey Kudler, Petitioner v Judicial Council of the Second Circuit

498 US 1018, 112 L Ed 2d 598, 111 S Ct 595.

December 10, 1990. The motion of petitioner for leave to proceed further herein in forma pauperis is granted. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this motion and this petition.

Former Decision, 498 US 802, 112 L Ed 2d 7, 111 S Ct 214.

[498 US 177]

IN RE MICHAEL SINDRAM, Petitioner

498 US 177, 112 L Ed 2d 599, 111 S Ct 596, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029

[No. 90-6051]

Decided January 7, 1991.

Decision: Person whose numerous petitions and motions had been unanimously rejected by Supreme Court, denied leave to proceed in forma pauperis on new petition or on any further petitions for extraordinary writs.

SUMMARY

A person who petitioned the United States Supreme Court pro se for a writ of mandamus compelling a Maryland court to expedite consideration of his appeal of a conviction for driving an automobile at an illegally high speed, requested leave to proceed in forma pauperis. The petitioner had already challenged his conviction in five different state and federal courts on 27 prior occasions. In connection with the conviction and other matters, the petitioner, during a 3-year period, had filed 43 separate petitions and motions with the Supreme Court, including 24 during the present term, and all were denied without recorded dissent; these filings included 20 petitions for certiorari, 15 petitions for rehearing, and two petitions for extraordinary writs. In the present mandamus petition, the petitioner, the majority of whose previous submissions to the Supreme Court related to his conviction for speeding, had offered legal bases for relief that had been presented by him in eight prior certiorari petitions and were identical to claims unsuccessfully presented in at least 13 of his rehearing petitions. Although having denied all these prior petitions and motions filed by the petitioner, the Supreme Court had never denied him leave to proceed in forma pauperis.

In a per curiam opinion expressing the view of REHNQUIST, Ch. J., and WHITE, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., the court denied the petitioner leave to proceed in forma pauperis and directed the Clerk of the Supreme Court not to accept any further petitions in forma pauperis from the petitioner for extraordinary writs, because (1) the request that the Supreme Court consider the petitioner's claims that did not satisfy the requirements for the issuance of an extraordinary writ and had been presented to the Supreme Court in more than a dozen prior petitions was both frivolous and abusive, (2) indigent pro se petitioners are not subject to the costs, such as filing fees and attorney's fees, that deter other litigants from filing frivolous petitions, and (3) frivolous petitions for extraordinary relief upset the fair administration of justice by forcing the Supreme Court to devote its time and resources to the processing of such requests.

Marshall, J., joined by Blackmun, and Stevens, JJ., dissented, expressing the view that (1) departures from the Supreme Court's tradition of welcoming claims from indigent litigants are not warranted by statute or the Supreme Court Rules, and (2) the Supreme Court should not presume that prolific indigent litigants will never bring a meritorious claim.

Blackmun, J., joined by Marshall, J., dissented, expressing the view that the filing by the petitioner of only two petitions with the Supreme Court for extraordinary relief during a 3-year period cannot have compromised the goal of fairly dispensing justice or have disrupted the fair allocation of judicial resources.

RE SINDRAM

(1991) 498 US 177, 112 L Ed 2d 599, 111 S Ct 596

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Supreme Court of the United States § 71 — leave to proceed in forma pauperis — extraordinary writs

1a-1f. A person will be denied leave to proceed in forma pauperis with his pro se petition to the United States Supreme Court for a writ of mandamus compelling a state court to expedite consideration of the petitioner's appeal of a conviction for driving an automobile at an illegally high speed, and the Clerk of the Supreme Court will be directed not to accept any further petitions in forma pauperis from the petitioner for extraordinary writs, where (1) during a 3-year period, the petitioner has made 42 separate filings

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

4 Am Jur 2d, Appeal and Error § 349; 32 Am Jur 2d, Federal Practice and Procedure §§ 222, 242, 243, 253, 258, 259, 263

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review §§ 3:231, 3:233, 3:249, 3:367, 3:369, 3:376

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review §§ 3:384-3:393.5, 3:421-3:426, 3:428, 3:429

11A Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2395, 2398, 2401; 17 Am Jur Pl & Pr Forms (Rev), Mandamus, Form 191

US L Ed Digest, Supreme Court of the United States § 71

Index to Annotations, Mandamus; Supreme Court of the United States

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

When will Supreme Court restrict litigant's right to file future in forma pauperis proceedings in Supreme Court. 103 L Ed 2d 981.

Indigent's federal constitutional right to maintain judicial proceedings without prepayment of court costs or fees—Supreme Court cases. 35 L Ed 2d 834.

Federal procedure: trial court's certification that appeal is not taken in good faith as affecting right to appeal in forma pauperis. 1 L Ed 2d 1964, 8 L Ed 2d 843.

Standards for determining whether proceedings in forma pauperis are frivolous and thus subject to dismissal under 28 USCS § 1915(d). 52 ALR Fed 679.

with the Supreme Court, including 20 petitions for certiorari, 15 petitions for rehearing, and two petitions for extraordinary writs, (2) although the Supreme Court has never denied the petitioner leave to proceed in forma pauperis, all these petitions and motions, including the 24 filed during the current Term, have been denied without recorded dissent, (3) in the present mandamus petition, the petitioner, the majority of whose previous submissions to the Supreme Court relate to the conviction for speeding, has offered legal bases for relief that were presented by him in eight prior certiorari petitions and are identical to claims unsuccessfully presented in at least 13 of his rehearing petitions, and (4) the petitioner has already challenged his conviction for speeding in five different state and federal courts on 27 prior occasions; the Supreme Court will adopt this approach because (1) the request that the Supreme Court yet again consider claims that do not satisfy the requirements for the issuance of an extraordinary writ and have been presented by the petitioner to the Supreme Court in more than a dozen prior petitions is both frivolous and abusive, (2) indigent pro se petitioners are not subject to the costs, such as filing fees and attorney's fees, that deter other litigants from filing frivolous petitions, and (3) in order to prevent frivolous petitions for extraordinary relief—which petitions are not subject to any time limitations—from upsetting the fair administration of justice, by forcing the Supreme Court to devote its time and resources to the processing of such requests, the Supreme Court has a duty to deny in forma pauperis status to the petitioner in the present petition and all future petitions for extraordinary relief. (Marshall, Blackmun, and Stevens, JJ., dissented from this holding.)

Supreme Court of the United States § 75 — pleading — extraordinary writ

2. On its face, a petition to the United States Supreme Court for an extraordinary writ does not satisfy the requirements for issuance of an extraordinary writ, where the petitioner (1) has made no showing that adequate relief cannot be had in any other form or from any other court, as required by Rule 20.1 of the Supreme Court Rules; and (2) identifies no drastic circumstance to justify extraordinary relief.

Supreme Court of the United States § 71 — leave to proceed in forma pauperis — extraordinary writs

3. A person from whom the Clerk of the United States Supreme Court has been directed by the Supreme Court not to accept any further petitions in forma pauperis for extraordinary writs, where the person has made repetitious and frivolous filings in abuse of the privilege of filing extraordinary writs in forma pauperis, remains free to file in forma pauperis requests for relief other than extraordinary relief, so long as he qualifies under Rule 39 of the Supreme Court Rules and does not similarly abuse that privilege.

[498 US 177]

Per Curiam.

[1a] Pro se petitioner Michael Sindram seeks an extraordinary writ pursuant to 28 USC § 1651 [28 USCS § 1651] and requests permission to proceed in forma pauperis under this Court's Rule 39. This is petitioner's 25th filing before this Court in the October 1990 Term alone. Pursuant to our decision in In re McDonald, 489 US 180, 103 L Ed 2d 158, 109 S Ct 993 (1989), we deny the motion for leave to proceed in forma pauperis.

[1b] Petitioner is no stranger to this Court. In the last three years, he has filed 43 separate petitions and motions, including [498 US 178] 21 petitions for certiorari, 16 petitions for rehearing, and 2 petitions for extraordinary writs.[1] Without recorded dissent, the Court has denied all of his appeals, petitions, and motions.[2] Petitioner has nonetheless persisted in raising essentially the same arguments in an unending series of filings. Like the majority of petitioner's previous submissions to this Court, the instant petition relates to a speeding ticket that

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[1] See Sindram v Reading, No. 87-5734, cert denied, 484 US 1013, 98 L Ed 2d 666, 108 S Ct 716, motion to file late petition for rehearing denied, 488 US 935, 102 L Ed 2d 348, 109 S Ct 331 (1988); Sindram v W & W Associates, No. 87-6689, cert denied, 486 US 1024, 100 L Ed 2d 230, 108 S Ct 1999 (1988); Sindram v Taylor, No. 88-5386, cert denied, 488 US 911, 102 L Ed 2d 254, 109 S Ct 266, rehearing denied, 488 US 987, 102 L Ed 2d 575, 109 S Ct 546 (1988); Sindram v Maryland, No. 89-5039, cert denied, 493 US 857, 107 L Ed 2d 122, 110 S Ct 165 (1989); In re Sindram, No. 88-6538, petition for writ of habeas corpus denied, 489 US 1064, 103 L Ed 2d 826, 109 S Ct 1358 (1989); Sindram v Ahalt, No. 89-6755, cert denied, 494 US 1086, 108 L Ed 2d 953, 110 S Ct 1824 (1990); Sindram v District of Columbia, No. 89-7266, cert denied, 496 US 940, 110 L Ed 2d 669, 110 S Ct 3222, rehearing denied, 497 US 1047, 111 L Ed 2d 824, 111 S Ct 9 (1990); Sindram v N. Richard Kimmel Prop., No. 89-7847, cert denied, 498 US 843, 112 L Ed 2d 92, 111 S Ct 123, rehearing denied, 498 US 973, 112 L Ed 2d 428, 111 S Ct 446 (1990); Sindram v Washington Suburban Sanitary Comm'n, No. 89-7848, cert denied, 498 US 843, 112 L Ed 2d 92, 111 S Ct 124, rehearing denied, 498 US 974, 112 L Ed 2d 428, 111 S Ct 446 (1990); Sindram v Garabedi, No. 90-5335, cert denied, 498 US 872, 112 L Ed 2d 156, 111 S Ct 194, rehearing denied, 498 US 974, 112 L Ed 2d 430, 111 S Ct 448 (1990); Sindram v Steuben Cty., No. 90-5351, cert denied, 498 US 873, 112 L Ed 2d 159, 111 S Ct 197, rehearing denied, 498 US 974, 112 L Ed 2d 430, 111 S Ct 448 (1990); Sindram v Consumer Protection Comm'n of Prince George's County, No. 90-5371, cert denied, 498 US 874, 112 L Ed 2d 161, 111 S Ct 199, rehearing denied, 498 US 974, 112 L Ed 2d 430, 111 S Ct 448 (1990); Sindram v Abrams, No. 90-5373, cert denied, 498 US 874, 112 L Ed 2d 161, 111 S Ct 199, rehearing denied, 498 US 974, 112 L Ed 2d 430, 111 S Ct 448 (1990); Sindram v Nissan Motor Corp., No. 90-5374, cert denied, 498 US 891, 112 L Ed 2d 194, 111 S Ct 234, rehearing denied, 498 US 974, 112 L Ed 2d 431, 111 S Ct 449 (1990); Sindram v Ryan, No. 90-5410, cert denied, 498 US 901, 112 L Ed 2d 218, 111 S Ct 261, rehearing denied, 498 US 974, 112 L Ed 2d 431, 111 S Ct 449 (1990); Sindram v Sweeney, No. 90-5456, cert denied, 498 US 903, 112 L Ed 2d 221, 111 S Ct 264, rehearing denied, 498 US 974, 112 L Ed 2d 431, 111 S Ct 449 (1990); Sindram v Wallin, No. 90-5577, cert denied, 498 US 944, 112 L Ed 2d 320, 111 S Ct 356, rehearing denied, 498 US 973, 112 L Ed 2d 426, 111 S Ct 444 (1990); Sindram v McKenna, No. 90-5578, cert denied, 498 US 944, 112 L Ed 2d 320, 111 S Ct 356, rehearing denied, 498 US 973, 112 L Ed 2d 427, 111 S Ct 444 (1990); Sindram v Lustine Chevrolet, Inc., No. 90-5698, cert denied, 498 US 969, 112 L Ed 2d 418, 1115 S Ct 435 (1990); Sindram v Montgomery Cty., No. 90-5699, cert denied, 498 US 948, 112 L Ed 2d 327, 111 S Ct 364, rehearing denied, 498 US 973, 112 L Ed 2d 427, 111 S Ct 444 (1990); and Sindram v Moran, No. 90-5885, cert denied, 498 US 988, 112 L Ed 2d 538, 111 S Ct 527 (1990), pet for rehearing pending. A response in Sindram v Maryland, No. 90-5352, was received on November 19, 1990, and the petition for certiorari is presently pending.

[2] **[1c]** We have permitted petitioner to proceed in forma pauperis in each of these actions based upon his affidavit that he earns only $2,600 per year and has no assets of any value.

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petitioner received on May 17, 1987, in Dorchester County, Maryland. Having already challenged his conviction for speeding in five different state and federal courts on 27 prior occasions, petitioner now requests that the Court issue a writ compelling the Maryland Court of Appeals to expedite consideration of his appeal in order that the speeding ticket may be expunged from his driving record. The petition for mandamus was filed less than three months after he filed his appeal with the Maryland court.

[1d] The mandamus petition alleges only that petitioner's "appeal in the lower court remains pending and unacted upon," and that "[a]s a direct and proximate cause of this dilatory action, Petitioner is unable to have his driving record expunged." Pet for Mandamus 2. The legal bases offered by petitioner for relief were presented in eight prior certiorari petitions and are identical to the claims unsuccessfully presented in at least 13 of petitioner's rehearing petitions.

[2] As we made clear in McDonald, the granting of an extraordinary writ is, in itself, extraordinary. 489 US, at 184-185, 103 L Ed 2d 158, 109 S Ct 993; see Kerr v United States District Court for Northern District of California, 426 US 394, 402-403, 48 L Ed 2d 725, 96 S Ct 2119 (1976). On its face, this petition does not even remotely satisfy the requirements for issuance of an extraordinary writ. Petitioner has made no showing that "adequate relief cannot be had in any other form or from any other court" as required by this Court's Rule 20.1. He identifies no "drastic" circumstance to justify extraordinary relief (see Ex parte Fahey, 332 US 258, 259, 91 L Ed 2041, 67 S Ct 1558 (1947)). Instead, he merely recites the same claims that he has presented to this Court in over a dozen prior petitions. Petitioner's request that we consider these claims yet again is both frivolous and abusive.

[1e] In McDonald, supra, we denied in forma pauperis status to a petitioner who filed a similarly nugatory petition for extraordinary writ. As we explained, the Court waives filing fees and costs for indigent individuals in order to promote the interests of justice. The goal of fairly dispensing justice, however, is compromised when the Court is forced to devote

[498 US 180]

its limited resources to the processing of repetitious and frivolous requests. Pro se petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations—filing fees and attorney's fees—that deter other litigants from filing frivolous petitions. Id., at 184, 103 L Ed 2d 158, 109 S Ct 993. The risks of abuse are particularly acute with respect to applications for extraordinary relief, since such petitions are not subject to any time limitations and, theoretically, could be filed at any time without limitation. In order to prevent frivolous petitions for extraordinary relief from unsettling the fair administration of justice, the Court has a duty to deny in forma pauperis status to those individuals who have abused the system. Under the circumstances of this case, we find it appropriate to deny in forma pauperis status to petitioner in this and all future petitions for extraordinary relief.

[1f, 3] Accordingly, if petitioner wishes to have his petition considered on its merits, he must pay the docketing fee required by this Court's Rule 38(a) and submit a petition in compliance with Rule 33 before January 28, 1991. The Clerk is directed not to accept any further petitions from petitioner for extraordinary writs pursuant to 28 USC §§ 1651(a), 2241, and 2254(a) [28 USCS §§ 1651(a), 2241, and 2254(a)], unless he pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33. Petitioner remains free under the present order to file in forma pauperis requests for relief other than an extraordinary writ, if he qualifies under this Court's Rule 39 and does not similarly abuse that privilege.

It is so ordered.

SEPARATE OPINIONS

Justice **Marshall,** with whom Justice **Blackmun** and Justice **Stevens** join, dissenting.

To rid itself of the minor inconvenience caused by Michael Sindram, and in forma pauperis litigant, the Court closes its doors to future in forma pauperis filings by Sindram for extraordinary writs and hints that restrictions on other filings

might be forthcoming. Because I continue to believe that departures of this sort from our generous tradition of welcoming claims from indigent litigants is neither wise nor warranted by statute or our rules, see In re McDonald, 489 US 180, 185, 103 L Ed 2d 158, 109 S Ct 993 (1989) (Brennan, J., dissenting, joined by Marshall, Blackmun, and Stevens, JJ.), I dissent.

As the Court documents, Sindram's filings have been numerous, and many have been frivolous. In my view, however, the Court's worries about the threats that hyperactive in forma pauperis litigants like Sindram pose to our ability to manage our docket are greatly exaggerated and do not support the penalty that the Court imposes upon him. We receive countless frivolous in forma pauperis filings each year, and, as a practical matter, we identify and dispense with them with ease. Moreover, indigent litigants hardly corner the market on frivolous filings. We receive a fair share of frivolous filings from paying litigants. Indeed, I suspect that because clever attorneys manage to package these filings so their lack of merit is not immediately apparent, we expend more time wading through frivolous paid filings than through frivolous in forma pauperis filings. To single out Sindram in response to a problem that cuts across all classes of litigants strikes me as unfair, discriminatory, and petty.

The Court's crackdown on Sindram's future filings for extraordinary writs is additionally disconcerting when one considers the total absence of any authority for the penalty the Court administers. As Justice Brennan keenly pointed out in In re McDonald, see id., at 185-186, 103 L Ed 2d 158, 109 S Ct 993, the in forma pauperis statute permits courts only to dismiss an action that is in fact frivolous. See 28 USC § 1915(d) [28 USCS § 1915(d)]. That statute, however, does not authorize us prospectively to bar an in forma pauperis filing on the ground that the litigant's earlier filings in unrelated actions were frivolous. This Court's Rules are equally silent on the matter. Rule 39, which governs in forma pauperis proceedings, includes no provision allowing prospective denial of in forma pauperis status. While Rule

[498 US 182]

42.2 permits assessing costs and damages for frivolous filings, it says nothing about saddling an indiscriminate litigant with what amounts to an injunction on future filings.

Some of our in forma pauperis filings are made by destitute or emotionally troubled individuals. As we struggle to resolve vexing legal issues of our day, it is tempting to feel put upon by prolific litigants who temporarily divert our attention from these issues. In my view, however, the minimal annoyance these litigants might cause is well worth the cost. Our longstanding tradition of leaving our door open to all classes of litigants is a proud and decent one worth maintaining. See Talamini v Allstate Ins. Co. 470 US 1067, 1070, 85 L Ed 2d 125, 105 S Ct 1824 (1985) (Stevens, J., concurring).

Moreover, we should not presume in advance that prolific indigent litigants will never bring a meritorious claim. Nor should we lose sight of the important role in forma pauperis claims have played in shaping constitutional doctrine. See, e.g., Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733 (1963). As Justice Brennan warned, "if . . . we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim." In re McDonald, supra, at 187, 103 L Ed 2d 158, 109 S Ct 993. By closing our door today to a litigant like Michael Sindram, we run the unacceptable risk of impeding a future Clarence Earl Gideon. This risk becomes all the more unacceptable when it is generated by an ineffectual gesture that serves no realistic purpose other than conveying an unseemly message of hostility to indigent litigants.

I dissent.

Justice **Blackmun,** with whom Justice **Marshall** joins, dissenting.

I join Justice Marshall's dissent. I write separately simply to emphasize what seems to me to be the inappropriateness of the Court's action in this particular case. Even if one believes, as I do not, that this Court has the authority prospectively to deny leave for a litigant to proceed in forma pauperis, and in some instances may be justified in doing so,

[498 US 183]

I cannot conclude that such action is warranted in this case. Jessie McDonald, the first pro se litigant to whom this Court has barred its doors prospectively, had filed 19 petitions for extraordinary relief when the Court concluded that he had abused the privilege of filing in forma pauperis. See In re McDonald, 489 US 180, 181, and n 3, 103 L Ed 2d 158, 109 S Ct 993 (1989). See also Wrenn v Benson, 490 US 89, 104 L Ed 2d 80, 109 S Ct 1629 (1989). As the Court today acknowledges, however, Michael Sindram has filed only two petitions for extraordinary relief since 1987: a petition for writ of habeas corpus filed in 1988 and the pending petition for mandamus. Ante, at 178, 112 L Ed 2d, at 603, and n 1.

While it may well be true that each of Sindram's petitions for extraordinary relief lacked merit, it cannot be, as the Court asserts, that these two petitions have "compromise[d]" the "goal of fairly dispensing justice," or "distrupt[ed] the fair allocation of judicial resources." Ante, at 179-180, 112 L Ed 2d, at 604. Rather, the Court's order in this case appears to be nothing more than an alternative for punishing Sindram for the frequency with which he has filed petitions for certiorari and petitions for rehearing. Ante, at 177-178, 112 L Ed 2d, at 603. Accordingly, I dissent.

[498 US 184]

RICHARD DEMAREST, Petitioner

v

JAMES MANSPEAKER et al.

498 US 184, 112 L Ed 2d 608, 111 S Ct 599

[No. 89-5916]

Argued November 6, 1990. Decided January 8, 1991.

Decision: Witness attendance fees held payable under 28 USCS § 1821 to convicted state prisoner who testified at federal trial pursuant to writ of habeas corpus ad testificandum.

SUMMARY

Under 28 USCS § 1821, a witness "in attendance" at any court of the United States is to be paid certain fees and allowances, including an attendance fee and a subsistence allowance. However, § 1821(d)(1) provides that no subsistence allowance is to be paid to a witness who is incarcerated, and § 1821(e) states that paroled or deportable aliens are ineligible to receive witness fees. Under 28 USCS § 1825, in any case in which the United States is a party, the clerk of the court is required to certify, and the United States marshall for the district is required to pay, attendance fees to defense witnesses who appear "pursuant to subpoenas issued upon approval of the court." A prisoner who was an inmate in a Colorado state correctional facility was brought to testify as a defense witness in a federal criminal trial, in the United States District Court for the District of Colorado, pursuant to a writ of habeas corpus ad testificandum issued by the District Court. After completing his testimony, the prisoner sought fees as a witness "in attendance," pursuant to § 1821, for the 8 days that he was available to testify and the 2 days that he spent in transit. In accordance with 28 USCS § 1825, the prisoner requested the clerk of the District Court to certify that the prisoner was entitled to receive witness fees. The clerk forwarded the certification request to the United States attorney, who denied the request on the ground that § 1821 does not entitle prisoners to receive witness fees. The prisoner subsequently petitioned the District Court for a writ of mandamus to order the clerk to certify the prisoner's request for fees. The District Court, dismissing the petition, held that § 1821 does

Briefs of Counsel, p 1229, infra.

not authorize the payment of witness fees to prisoners. The United States Court of Appeals for the Tenth Circuit affirmed on appeal (884 F2d 1343).

On certiorari, the United States Supreme Court reversed. In an opinion by Rehnquist, Ch. J., expressing the unanimous view of the court, it was held that 28 USCS § 1821 is to be construed as requiring the payment of witness attendance fees to a convicted state prisoner who testifies at a federal trial pursuant to a writ of habeas corpus ad testificandum, given that (1) § 1821's express exclusion of incarcerated individuals from eligibility for subsistence fees, and of detained aliens from eligibility for any fees or allowances, indicates that the general language "witness in attendance" includes prisoners unless they are otherwise excepted in the statute; (2) the language of 28 USCS § 1825 does not modify the language of § 1821 in a manner that justifies exclusion from the witness fee provisions of prisoners who are "produced" by a writ of habeas corpus ad testificandum and not "summoned" by a subpoena or other means; (3) there was no indication that Congress, when revising § 1821 in 1978, was aware of an administrative construction or court decisions that denied attendance fees to prisoners; and (4) application of § 1821 as written would not produce a result demonstrably at odds with the intentions of its drafters.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Statutes §§ 91, 132, 154, 158.8, 176; Witnesses § 105 — attendance fees for prisoners — writ of habeas corpus ad testificandum

1a-1d. Under 28 USCS § 1821—

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

39 Am Jur 2d, Habeas Corpus § 2; 81 Am Jur 2d, Witnesses §§ 7, 13, 25

16 Federal Procedure, L Ed, Habeas Corpus §§ 41:599-41:605; 33 Federal Procedure, L Ed, Witnesses §§ 80:199, 80:200, 80:202, 80:203

10 Federal Procedural Forms, L Ed, Habeas Corpus § 36:142

13 Am Jur Pl & Pr Forms (Rev), Habeas Corpus, Forms 211, 212; 25 Am Jur Pl & Pr Forms (Rev), Witnesses, Forms 41-52

28 USCS §§ 1821, 1825

US L Ed Digest, Witnesses § 105

Index to Annotations, Habeas Corpus; Witnesses

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's view as to weight and effect to be given, on subsequent judicial construction, to prior administrative construction of statute. 39 L Ed 2d 942.

Allowance of costs for witness' travel expenses in attending federal civil trial for purposes of testifying. 13 L Ed 2d 1036.

Requirements, under Rule 45(c) of Federal Rules of Civil Procedure and Rule 17(d) of Federal Rules of Criminal Procedure, relating to service of subpoena and tender of witness fees and mileage allowance. 77 ALR Fed 863.

Issuance by federal court, pursuant to 28 USCS § 2241(c)(5), of writ of habeas corpus ad testificandum requiring presence of prisoner to testify at civil or criminal trial. 65 ALR Fed 321.

Allowance of mileage or witness fees with respect to witnesses who were not called to testify or not permitted to do so when called. 22 ALR3d 675.

Right of witness detained in custody for future appearance to fees for such detention. 50 ALR2d 1439.

which provides that (1) a witness "in attendance" at any court of the United States shall be paid certain fees and allowances, including an attendance fee and a subsistence allowance, but (2) no subsistence allowance shall be paid to a witness who is incarcerated, and (3) paroled or deportable aliens are ineligible to receive witness fees—attendance fees must be paid to a convicted state prisoner who testifies at a federal trial pursuant to a writ of habeas corpus ad testificandum; § 1821 is to be construed as requiring such payment, because (1) the express exclusion of incarcerated individuals from eligibility for subsistence fees, and of detained aliens from eligibility for any fees or allowances, indicates that the general language "witness in attendance" includes prisoners unless they are otherwise excepted in the statute; (2) the language of 28 USCS § 1825—which provides that in any case in which the United States is a party, the clerk of the court is required to certify, and the United States marshall for the district is required to pay, attendance fees to defense witnesses who appear "pursuant to subpoenas issued upon approval of the court"—does not modify the language of § 1821 in a manner which justifies exclusion from the witness fee provisions of prisoners who are "produced" by a writ of habeas corpus ad testificandum and not "summoned" by a subpoena or other means; (3) there is no indication that Congress, when revising § 1821 in 1978, was aware of an administrative construction or court decisions that denied attendance fees to prisoners; and (4) application of § 1821 as written will not produce a result demonstrably at odds with the intentions of its drafters.

Appeal §§ 1087.5(2), 1112.5 — point not raised in certiorari petition — issue not presented below

2. On certiorari to review a United States Court of Appeals decision as to whether 28 USCS § 1821 required payment of witness fees to a convicted state prisoner who testified at a federal trial pursuant to a writ of habeas corpus ad testificandum, the United States Supreme Court will decline to consider the question whether alleged defects in the prisoner's petition for fees constituted an independent basis for the denial of fees, where this question was not raised in the courts below but is raised for the first time in the Supreme Court after that court's grant of certiorari.

Statutes §§ 157, 158.7 — administrative construction — re-enactment

3. Administrative interpretation of a statute is not entitled to deference by the courts where the interpretation is contrary to the statute's plain language; where the law is plain, subsequent re-enactment of a statute does not constitute an adoption of a previous administrative construction of the statute.

Statutes § 83 — construction — absence of ambiguity

4. Except in rare and exceptional circumstances, judicial inquiry as to the construction of a statute is complete when the court finds the terms of the statute unambiguous.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Demarest, an inmate in a state correctional facility, testified as a witness in a federal criminal trial pursuant to a writ of habeas corpus ad testificandum issued by the District Court. In accordance with 28 U. S. C. § 1825(a) [28 USCS § 1825(a)], he requested that respondent Clerk of the Court certify that he was entitled to fees as a "witness . . . in attendance" under § 1821. After the request was denied, he filed a petition for a writ of mandamus requesting the court to order the Clerk to certify the fees, which was dismissed on the ground that § 1821 does not authorize the payment of witness fees to prisoners. The Court of Appeals affirmed, holding that while § 1821's language was unqualified, other evidence revealed that Congress did not intend to permit prisoners to receive witness fees.

Held: Section 1821 requires payment of witness fees to a convicted state prisoner who testifies at a federal trial pursuant to a writ of habeas corpus ad testificandum. The statute's terms make virtually inescapable the conclusion that a "witness in attendance at any court of the United States" under § 1821(a)(1) includes prisoners unless they are otherwise excepted in the statute. That Congress was thinking about incarcerated persons when it drafted the statute is shown by the fact that subsection (d)(1) excluded incarcerated witnesses from eligibility for subsistence payments and subsection (e) expressly excepted another class of incarcerated witnesses—detained aliens—from any eligibility for fees. Respondents' argument that the language of § 1825(a)—which requires that fees be paid to defense witnesses "appearing pursuant to subpoenas issued upon approval of the court"—modifies the "in attendance" at court language of § 1821(a)(1) to exclude prisoners because they are "produced" under a writ of habeas corpus ad testificandum is rejected. That reading is inconsistent with respondents' concession that fees are routinely paid to defense witnesses appearing by verbal agreement among the parties and with Hurtado v United States, 410 US 578, 35 L Ed 2d 508, 93 S Ct 1157, which upheld the right to fees of material witnesses who, rather than being subpoenaed, were detained under former Federal Rule of Criminal Procedure 46(b). If these are exceptions to respondents' concept of "in attendance," then that concept means no more than "summoned by a means other than a writ of habeas corpus ad testificandum." Such a view is not supported by the statutory language and would lead to the anomaly that prisoners summoned to testify for the Government would receive fees—since § 1825(a) does not require them to appear personally by subpoena—while witnesses summoned by the defendant would not. In reaching its decision, the Court of Appeals mistakenly relied on longstanding administrative construction of the statute and other courts' decisions denying attendance fees to prisoners, followed by congressional revision of the statute. Administrative interpretation of a statute contrary to the statute's plain language is not entitled to deference, and, where the law is plain, subsequent reenactment does not constitute adoption of a previous administrative construction. This case does not present a rare and exceptional circumstance where the application of the statute as written will produce a result demonstrably at odds with its drafters' intentions. While there may be good reasons to deny fees to prisoners, who are seldom gainfully employed and therefore do not suffer the loss of income for attendance that many other witnesses do, the same can be said of children and retired persons, who are clearly entitled to fees. This Court declines to consider respondents' argument that defects in Demarest's petition constitute an independent basis for the Clerk's decision to withhold certification, since it was not raised in the courts below.

884 F2d 1343, reversed.

Rehnquist, C. J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

James E. Scarboro argued the cause for petitioner.
Michael R. Lazerwitz argued the cause for respondents.
Briefs of Counsel, p 1229, infra.

OPINION OF THE COURT

[498 US 185]

Chief Justice **Rehnquist** delivered the opinion of the Court.

[1a] The question presented is whether 28 USC § 1821 [28 USCS § 1821] requires payment of witness fees to a convicted state prisoner who testifies at a federal trial pursuant to a writ of habeas corpus ad testificandum. The Court of Appeals for the Tenth Circuit concluded that it does not. We disagree and conclude that it does.

[498 US 186]

In March 1988, petitioner Richard Demarest, an inmate in a Colorado state correctional facility, was summoned to appear as a defense witness in a federal criminal trial. He was transported by a United States marshal to the Denver County Jail pursuant to a writ of habeas corpus ad testificandum which had been issued by the United States District Court for the District of Colorado. Demarest testified on the 8th day of the 11-day trial and remained in the custody of federal marshals throughout that period. After completing his testimony, Demarest sought fees as a "witness . . . in attendance," pursuant to 28 USC § 1821 [28 USCS § 1821] for the eight days that he was available to testify and the two days that he spent in transit to and from the Denver County Jail.

In accordance with 28 USC § 1825(a) [28 USCS § 1825(a)], petitioner requested that the Clerk of the District Court, respondent James Manspeaker, certify that petitioner was entitled to receive witness fees, and forward that certification to the United States marshal for payment of the fee. Respondent forwarded petitioner's request to the United States attorney, who in turn denied petitioner's request for certification on the ground that § 1821(a) does not entitle prisoners to receive witness fees. Demarest subsequently sought a writ of mandamus requesting the District Court to order Manspeaker to certify his request for fees. The District Court dismissed the petition, agreeing with respondent that § 1821 does not authorize the payment of witness fees to prisoners.

The United States Court of Appeals for the Tenth Circuit affirmed by a divided vote. 884 F2d 1343 (1989). The court held that while the language of § 1821 was "unqualified," other evidence revealed that Congress did not intend to permit prisoners to receive witness fees. We granted certiorari, 495 US 903, 109 L Ed 2d 285, 110 S Ct 1921 (1990), in order to determine whether a convicted state prisoner brought to testify at a federal trial by virtue of a writ of habeas corpus ad testificandum is entitled to witness fees under § 1821.

In deciding a question of statutory construction, we begin of course with the language of the statute. Section 1821 provides as follows:

> "(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States . . . shall be paid the fees and allowances provided by this section.
>
> . . . . .
>
> "(b) A witness shall be paid an attendance fee of $30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.
>
> . . . . .
>
> "(d)(1) A subsistence allowance shall be paid to a witness (other than a witness who is incarcerated) when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.
>
> . . . . .
>
> "(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 USC 1182(d)(5) [8 USCS § 1182(d)(5)]), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 242(b) of such Act (8 USC 1252(b) [8 USCS § 1252(b)]) to be deportable, shall be ineligible to receive the fees or allowances provided by this section."

Subsection (a)(1) provides that a "witness in attendance at any court of the United States" shall be paid fees. Subsection (b) provides that "a witness shall be paid an attendance fee of $30." Subsection (d)(1) provides for subsistence fees to witnesses, but excepts those who are incarcerated. Subsection (e) excludes paroled or deportable aliens from eligibility

for fees. We think this analysis shows that Congress was thinking about incarcerated individuals when it drafted the statute, since it excluded them from eligibility for subsistence fees. We believe subsection (e) removes all doubt on this question, since Congress expressly excepted another class of incarcerated witnesses—detained aliens—from eligibility for fees. The conclusion is virtually inescapable, therefore, that the general language "witness in attendance at any court of the United States" found in subsection (a)(1) includes prisoners unless they are otherwise excepted in the statute.

Respondents rely on the cognate provisions of 28 USC § 1825 [28 USCS § 1825] to sustain the decision below. That section provides:

> "(a) In any case in which the United States . . . is a party, the

United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, . . . except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

. . . . .

"(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by . . . counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such . . . counsel."

[2] Respondents first argue that Demarest did not satisfy the requirements of 28 USC § 1825 [28 USCS § 1825] because he failed to allege that he appeared pursuant to a subpoena or that he had obtained an affidavit regarding his attendance from the defendant's counsel. Respondents contend that these defects in petitioner's certification request constitute an independent basis for the Clerk's decision to withhold certification, and thus we need not reach the question whether petitioner would have been entitled to fees had he made a proper petition. Respondents raised these alleged defects for the first

[498 US 189]

time in this Court, after our grant of certiorari. Respondents did not raise this question in the courts below, and we decline to consider it here for the first time. Lytle v Household Mfg., Inc., 494 US 545, 551-552, n 3, 108 L Ed 2d 504, 110 S Ct 1331 (1990).

[1b] On the merits, respondents argue that the language of § 1825, considered in pari materia with § 1821, modifies the language of that section in a manner which justifies exclusion of prisoners from the witness fee provisions of that section. While conceding that § 1821 applies to all witnesses in attendance, respondents urge that § 1825(a)'s reference to subpoenas imports a highly particularized meaning to the words "in attendance." Respondents observe that § 1825(a) requires the clerk of the court to certify attendance fees to defense witnesses "appearing pursuant to subpoenas issued upon approval of the court." Respondents read this language to be exclusive. Therefore, they reason that since prisoners are technically "produced" under a writ of habeas corpus ad testificandum, rather than summoned by a subpoena, they are not the types of defense witnesses entitled to fees within § 1821.

Although respondents' reading of these two sections is literally plausible, it is inconsistent with respondents' own concessions and with our decision in Hurtado v United States, 410 US 578, 35 L Ed 2d 508, 93 S Ct 1157 (1973). Respondents admit that defense witnesses who appear other than by subpoena—by nothing more than verbal arrangement among the parties—are routinely paid witness fees. And in Hurtado, we upheld the right of material witnesses who were detained pursuant to former Federal Rule of Criminal Procedure 46(b) to receive witness fees. These witnesses were not subpoenaed, but were detained pursuant to the Rule because of their inability to give security for appearance. 410 US, at 579, n 1, 35 L Ed 2d 508, 93 S Ct 1157.

Respondents nonetheless maintain that these are exceptions to the sort of "process" which they conceive to be a necessary element of being "in attendance" at court under § 1821(a)(1). But by this point the concept urged by respondents

comes to mean no more than "summoned by means other than a writ of habeas corpus ad testificandum." Not only is there no support in the statutory language for this view, but respondents' construction would lead to the anomaly that prisoners summoned to testify for the Government would receive fees—since § 1825(a) does not require such witnesses to appear personally by subpoena—while witnesses summoned by the defendant would not receive fees.

The Court of Appeals, while agreeing that the statutory analysis outlined above was "[o]n its face . . . an appealing argument," 884 F2d, at 1345, relied on longstanding administrative construction of the statute denying attendance fees to prisoners, and two court decisions to the same effect,* followed by congressional revision of the statute in 1978.

[1c, 3] But administrative interpretation of a statute contrary to language as plain as we find here is not entitled to deference. See Public Employees Retirement System of Ohio v Betts, 492 US 158, 106 L Ed 2d 134, 109 S Ct 2854 (1989). There is no indication that Congress was aware of the administrative construction, or of the court decisions, at the time it revised the statute. Where the law is plain, subsequent reenactment does not constitute an adoption of a previous administrative construction. Leary v United States, 395 US 6, 24-25, 23 L Ed 2d 57, 89 S Ct 1532 (1969).

[1d, 4] When we find the terms of a statute unambiguous, judicial inquiry is complete except in rare and exceptional circumstances. Burlington Northern R. Co. v Oklahoma Tax Comm'n, 481 US 454, 461, 95 L Ed 2d 404, 107 S Ct 1855 (1987); Rubin v United States, 449 US 424, 430, 66 L Ed 2d 633, 101 S Ct 698 (1981); TVA v Hill, 437 US 153, 187, 57 L Ed 2d 117, 98 S Ct 2279 (1978). We do not believe that this is one of those rare cases where the application of the statute as written will produce a result "demonstrably at odds with the intentions of its drafters." Griffin v Oceanic Contractors, Inc., 458 US 564,

571, 73 L Ed 2d 973, 102 S Ct 3245 (1982). There may be good reasons not to compensate prisoners for testifying at federal trials; they are seldom gainfully employed in prison, and therefore do not suffer the loss of income from attendance which many other witnesses do. But the same is true of children and retired persons, who are clearly entitled to witness fees under the statute and customarily receive them. We cannot say that the payment of witness fees to prisoners is so bizarre that Congress "could not have intended" it. Id., at 575, 73 L Ed 2d 973, 102 S Ct 3245.

The judgment of the Court of Appeals is reversed.

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* Meadows v United States Marshal, Northern District of Georgia, 434 F2d 1007 (CA5 1970) cert denied, 401 US 1014, 28 L Ed 2d 551, 91 S Ct 1265 (1971); Marchese v United States, 197 Ct Cl 102, 453 F2d 1268 (1972).

[498 US 192]

JOHN L. CHEEK, Petitioner

v

UNITED STATES

498 US 192, 112 L Ed 2d 617, 111 S Ct 604

[No. 89-658]

Argued October 3, 1990. Decided January 8, 1991.

Decision: Instructions as to willfulness under 26 USCS §§ 7201 and 7203, that jury should disregard criminal defendant's asserted beliefs that wages are not income and that he was not taxpayer within meaning of Internal Revenue Code, held erroneous.

SUMMARY

In a federal prosecution in which the defendant was eventually convicted, under 26 USCS §§ 7201 and 7203, on several counts of "willfully" attempting to evade income taxes and "willfully" failing to file federal income tax returns, (1) although the defendant admitted that he had not filed returns during the relevant time period, the defendant (a) testified that he had attended seminars by a group which believed that the federal tax system was unconstitutional, (b) produced a letter from an attorney to the effect that the Federal Constitution's Sixteenth Amendment did not authorize a tax on wages or salaries, but only on gain or profit, (c) offered the defense that he had sincerely believed, during the relevant time period, that the tax laws were being unconstitutionally enforced, and (d) argued that he had acted without the requisite willfulness; but (2) the Federal District Court gave the jury (a) initial instructions to the effect that an objectively reasonable, good-faith misunderstanding of the law would negate willfulness, but mere disagreement with the law would not, and (b) supplemental instructions to the effect that (i) a person's opinion that the tax laws violated his constitutional rights did not constitute a good-faith misunderstanding of the law, and (ii) an honest but unreasonable belief was not a defense and did not negate willfulness. On appeal, the United States Court of Appeals for the Seventh Circuit, in affirming the defendant's convictions, expressed the view that (1) the District Court had not erred in instructing the jury that only an objectively reasonable, good-faith misunderstanding of the law

Briefs of Counsel, p 1229, infra.

negated the statutory willfulness requirement; and (2) among the beliefs which were not objectively reasonable were the beliefs that (a) wages are not income, or (b) the tax laws are unconstitutional (882 F2d 1263).

On certiorari, the United States Supreme Court vacated the Court of Appeals' judgment and remanded the case for further proceedings. In an opinion by White, J., joined by Rehnquist, Ch. J., and Stevens, O'Connor, and Kennedy, JJ., it was held that (1) in a prosecution, under §§ 7201 and 7203, for "willfully" attempting to evade federal income taxes and "willfully" failing to file federal income tax returns, (a) there is no requirement that a defendant's claimed good-faith belief must be objectively reasonable if the claimed belief is to be considered as possibly negating the Federal Government's evidence purporting to show a defendant's awareness of the legal duty at issue, but (b) the defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness and need not be heard by the jury; and (2) thus, for purposes of determining the willfulness, under §§ 7201 and 7203, of the defendant in the case at hand, (a) it was error, however incredible such claimed misunderstandings of and beliefs about the tax law might be, to instruct the jury not to consider the defendant's asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code, but (b) it was not error, regardless of whether the claims of invalidity were frivolous or had substance, to instruct the jury not to consider the defendant's claims that the tax laws are unconstitutional.

Scalia, J., concurring in the judgment, expressed the view that (1) the Supreme Court's cases had consistently held that a failure to pay a tax in the good-faith belief that the tax is not legally owing is not "willful"; but (2) the court's opinion in the case at hand, in saying that a good-faith, erroneous belief in the unconstitutionality of a tax law is no defense, squarely reversed the long-established statutory construction.

Blackmun, J., joined by Marshall, J., dissenting, expressed the view that the Court of Appeals' judgment ought to be affirmed, for (1) it was incomprehensible how, more than 70 years after the institution of the present federal income tax system, any taxpayer of competent mentality could assert, as a defense to charges of statutory willfulness, that the wage that the taxpayer receives for labor is not income; and (2) the District Court's instruction that an objectively reasonable and good-faith misunderstanding of the law negated willfulness lent further, rather than less, protection to the defendant, because the instruction added an additional hurdle for the prosecution to overcome.

Souter, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

34 Am Jur 2d, Federal Taxation (1991) ¶¶ 9381, 9384, 9387; 35 Am Jur

20 Federal Procedure, L Ed, Internal Revenue § 48:1404

11 Federal Procedural Forms, L Ed, Internal Revenue §§ 43:362-43:364

11A Am Jur Pl & Pr Forms (Rev), Federal Tax Enforcement, Forms 41-43, 45

13 Am Jur Trials 1, Defending Federal Tax Evasion Cases

26 USCS §§ 7201, 7203

RIA Federal Tax Coordinator 2d ¶¶ V-3502, V-4200—V-4208, V-4220, V-4221

US L Ed Digest, Income Taxes § 174; Trial §§ 272, 273, 285

Index to Annotations, Good Faith; Income Tax; Instructions to Jury; Intentional, Wilful, and Wanton Acts; Taxes; Tax Evasion; Tax Returns

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Tax protester's failure to submit, or submission of erroneous or incomplete, federal income tax returns as violative of § 7203 of Internal Revenue Code of 1954 (26 USCS § 7203), prohibiting willful failure to file return or to supply information. 60 ALR Fed 158.

Reliance on advice of attorney, accountant, or tax expert as defense in criminal prosecution for attempt to evade federal income tax under § 7201 of the Internal Revenue Code of 1954 (26 USC § 7201). 3 ALR Fed 665.

Test of "wilfulness" in prosecution for wilful failure to pay tax, file tax return, etc., under § 7203 of the Internal Revenue Code of 1954 (26 USC § 7203). 22 ALR3d 1173.

Excuse for failure to file return within limitation provisions of Internal Revenue Code. 30 ALR2d 452.

Reliance on attorney, accountant, or other expert in preparing income tax returns as defense against fraud penalties. 22 ALR2d 972.

What amounts to "reasonable cause" for failure to file, or delay in filing, tax return. 3 ALR2d 617.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Evidence §§ 786, 789, 914, 918, 989.5; Income Taxes § 174; Statutes § 107; Trial §§ 96, 157 — criminal case — willfulness — good faith — awareness of legal duty — relevancy — sufficiency — jury question

1a-1d. In a prosecution, under 26 USCS §§ 7201 and 7203, for "willfully" attempting to evade federal income taxes and "willfully" failing to file federal income tax returns, there is no requirement that a defendant's claimed good-faith belief must be objectively reasonable if the claimed belief is to be considered as possibly negating the Federal Government's evidence purporting to show a defendant's awareness of the legal duty at issue, because (1) knowledge and belief are characteristically questions for the factfinder, such as the jury in such a prosecution, (2) characterizing a particular belief as not objectively reasonable would (a) transform the inquiry into a legal one, and (b) prevent the jury from considering the issue, and (3) while it is proper to exclude evidence having no relevance or probative value with respect to willfulness, (a) it is not contrary to common sense, let alone impossible, for a defendant to be ignorant of the defendant's duty based on a rational belief that the defendant has no duty, and (b) forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the jury-trial provision of the Federal Constitution's Sixth Amendment; if a defendant asserts that the defendant truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believes the defendant, the Federal Government has not carried its burden to prove willfulness, however unreasonable a court might deem such belief; the jury, in deciding whether to credit such a defendant's good-faith belief claim, is free to consider any admissible evidence from any source showing that the defendant was aware of the duty to file a return and to treat wages as income, including evidence showing the defendant's awareness of (1) the relevant provisions of the Internal Revenue Code or regulations, (2) court decisions rejecting the defendant's interpretation of the tax law, (3) authoritative rulings of the Internal Revenue Service, or (4) any contents of the personal income tax return forms and accompanying instructions that make it plain that wages should be returned as income. (Blackmun and Marshall, JJ., dissented in part from this holding.)

Evidence §§ 786, 789; Income Taxes §§ 158, 166, 169, 174; Statutes §§ 102, 103 — criminal case — willfulness — good faith — view that tax laws are unconstitutional — relevancy — availability of other court review — claim for refund — suit to recover taxes paid

2a-2e. A defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness and need not be heard by the jury in a prosecution, under 26 USCS §§ 7201 and 7203, for "willfully" attempting to evade income taxes and "willfully" failing to file federal income tax returns; for such purpose, it makes no difference whether the claims of invalidity are frivolous or have substance, because (1) claims that provisions of the Internal Revenue Code are unconstitutional do not arise from innocent mistakes caused by the complexity of the Code, but reveal (a) full knowledge of the provisions at issue, and (b) a studied conclusion, however wrong, that those provisions are invalid and unenforceable, and (2) Congress did not contemplate that such a taxpayer, without risking criminal prosecution, could ignore the duties imposed on the taxpayer by the Code and refuse to utilize the mechanisms provided by Congress to present the taxpayer's claims of invalidity to the courts and to abide by the courts' decisions, where such a taxpayer is free (a) under 26 USCS § 7422, to pay the tax that the law purports to require, file for a refund, and if denied, present the claims of invalidity, constitutional or otherwise, to the courts, or (b) under 26 USCS § 6213, to challenge alleged tax deficiencies in the Tax Court without paying the tax, with a right of appeal to a higher court, under 26 USCS § 7482(a)(1), if the taxpayer is unsuccessful; a defendant who takes neither course is in no position to claim that the defendant's allegedly good-faith belief about the validity of the Code (1) negates willfulness, or (2) provides a defense to criminal prosecutions under §§ 7201 and 7203; while such a defendant is free in such a prosecution to present the defendant's claims of invalidity and to have those claims adjudicated, such a defendant, like defendants in criminal cases in other contexts who "willfully" refuse to comply with the duties placed upon them by law, must take the risk of being wrong. (Scalia, J., dissented from this holding.)

Trial §§ 272, 273, 285 — criminal case — willfulness — instructions to disregard claims or beliefs of defendant

3a-3d. For purposes of determining a defendant's willfulness—in a prosecution, under 26 USCS §§ 7201 and 7203, for "willfully" attempting to evade income taxes and "willfully" failing to file federal income tax returns—(1) it is not error to instruct the jury not to consider the defendant's claims that the tax laws are unconstitutional, because (a) if a defendant's views about the validity of tax statutes are heard by the jury, an instruction to disregard them is proper, and (b) for such a purpose, it makes no difference whether the claims of invalidity are frivolous or have substance; but (2) it is error, however incredible such claimed misunderstandings of and beliefs about the tax law might be, to instruct the jury not to consider the defendant's asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code. (Scalia, Blackmun, and Marshall, JJ., dissented in part from this holding.)

Criminal Law § 20; Evidence § 147; Notice § 5 — ignorance or mistake of law — presumption

4. As a general rule of the American legal system, ignorance of the law or a mistake of law is no defense to criminal prosecution; the common-law rule, based on the notion that the law is definite and knowable, is that every person is presumed to know the law.

Internal Revenue § 95; Statutes §§ 102, 103 — criminal case — willfulness

5a, 5b. In federal criminal tax cases, the standard for the statutory willfulness requirement is the voluntary, intentional violation of a known legal duty, where (1) in the nation's complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law; and (2) it is not the purpose of the law to penalize (a) frank difference of opinion, or (b) innocent errors made despite the exercise of reasonable care.

Evidence §§ 147, 178, 180, 914, 918, 989.5 — federal criminal tax case — willfulness — knowledge of legal duty — good faith — burden of proof — sufficiency

6. In federal criminal tax cases, the statutory requirement of willfulness requires the Federal Government to prove that (1) the law imposed a duty on the defendant, (2) the defendant knew of that duty, and (3) the defendant voluntarily and intentionally violated that duty; in a federal criminal tax case in which the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation that the defendant is accused of violating, and in which case there is no claim that the provision at issue is invalid, (1) if the Federal Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement, but (2) carrying this burden requires negating a defendant's claim of ignorance of the law—or a claim that the defendant, because of a misunderstanding of the law, had a good-faith belief that the defendant was not violating any provisions of the tax laws—for one cannot be aware that the law imposes a duty and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist; in the end, the issue is whether, based on all the evidence, the Federal Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, regardless of whether the claimed belief or misunderstanding is objectively reasonable. (Blackmun and Marshall, JJ., dissented in part from this holding).

Statutes § 107 — avoidance of constitutional questions

7. The United States Supreme Court, where possible, interprets congressional enactments so as to avoid raising serious constitutional questions.

Appeal § 1339.5; Income Taxes §§ 9, 10 — federal power — Sixteenth Amendment — certiorari — review of Court of Appeals' decision

8a, 8b. Even though a federal criminal defendant's constitutional arguments are not objectively reasonable or are frivolous, the United States Supreme Court—on certiorari to review a Federal Court of Appeals' affirmance of the defendant's convictions, under 26 USCS §§ 7201 and 7203, on several counts of "willfully" attempting to evade federal income taxes and "willfully" failing to file federal income tax returns—will address the significance of the defendant's constitutional claims to the issue of willfulness, where (1) at trial, (a) the defendant testified that it was his belief that the law was being enforced unconstitutionally, (b) the defendant produced a letter from counsel to the effect that (i) Congress' power to tax supposedly came from Art I, § 8, cl 1 of the United

States Constitution, and not from the Constitution's Sixteenth Amendment, and (ii) the Sixteenth Amendment, construed with Art I, § 2, cl 3 of the Constitution, supposedly did not authorize a tax on wages and salaries, but only on gain and profit, (c) the jury, during deliberations, asked for a portion of the transcript wherein the defendant had said that he was attempting to test the constitutionality of the income tax laws, and (d) the trial judge later instructed the jury that an opinion that the tax laws violated a person's constitutional rights did not constitute a good-faith misunderstanding of the law; and (2) at oral argument before the Supreme Court, the defendant's counsel made observations to the effect that (a) a personal belief that a known statute was unconstitutional smacked of knowledge of existing law, but disagreement with it, yet (b) a "little different situation" was presented if the person was told by a lawyer or an accountant erroneously that the statute was unconstitutional.

Appeal § 1662 — effect of decision on other grounds

9a, 9b. On certiorari to review a Federal Court of Appeals' affirmance of a defendant's convictions, under 26 USCS §§ 7201 and 7203, on several counts of "willfully" attempting to evade federal income taxes and "willfully" failing to file federal income tax returns, the United States Supreme Court need not address the defendant's arguments that the Federal Constitution's First, Fifth, and Sixth Amendments are violated by the application to the defendant of the Court of Appeals' "objectively reasonable" standard for willfulness, where the Supreme Court invalidates the "objectively reasonable" standard on statutory grounds.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Cheek was charged with six counts of willfully failing to file a federal income tax return in violation of § 7203 of the Internal Revenue Code (Code) and three counts of willfully attempting to evade his income taxes in violation of § 7201. Although admitting that he had not filed his returns, he testified that he had not acted willfully because he sincerely believed, based on his indoctrination by a group believing that the federal tax system is unconstitutional and his own study, that the tax laws were being unconstitutionally enforced and that his actions were lawful. In instructing the jury, the court stated that an honest but unreasonable belief is not a defense and does not negate willfulness, and that Cheek's beliefs that wages are not income and that he was not a taxpayer within the meaning of the Code were not objectively reasonable. It also instructed the jury that a person's opinion that the tax laws violate his constitutional rights does not constitute a good-faith misunderstanding of the law. Cheek was convicted, and the Court of Appeals affirmed.

Held:

1. A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Statutory willfulness, which protects the average citizen from prosecution for innocent mistakes made due to the complexity of the tax laws. United States v Murdock, 290 US 389, 78 L

Ed 381, 54 S Ct 223, is the voluntary, intentional violation of a known legal duty. United States v Pomponio, 429 US 10, 50 L Ed 2d 12, 97 S Ct 22. Thus, if the jury credited Cheek's assertion that he truly believed that the Code did not treat wages as income, the Government would not have carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Characterizing a belief as objectively unreasonable transforms what is normally a factual inquiry into a legal one, thus preventing a jury from considering it. And forbidding a jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision, which this interpretation of the statute avoids. Of course, in deciding whether to credit Cheek's claim, the jury is free to consider any admissible evidence showing that he had knowledge of his legal duties.

2. It was proper for the trial court to instruct the jury not to consider Cheek's claim that the tax laws are unconstitutional, since a defendant's views about the tax statutes' validity are irrelevant to the issue of willfulness and should not be heard by a jury. Unlike the claims in the Murdock-Pomponio line of cases, claims that Code provisions are unconstitutional do not arise from innocent mistakes caused by the Code's complexity. Rather, they reveal full knowledge of the provisions at issue and a studied conclusion that those provisions are invalid and unenforceable. Congress could not have contemplated that a taxpayer, without risking criminal prosecution, could ignore his duties under the Code and refuse to utilize the mechanisms Congress provided to present his invalidity claims to the courts and to abide by their decisions. Cheek was free to pay the tax, file for a refund, and, if denied, present his claims to the courts. Also, without paying the tax, he could have challenged claims of tax deficiencies in the Tax Court.

882 F2d 1263, vacated and remanded.

White, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Stevens, O'Connor, and Kennedy, JJ., joined. Scalia, J., filed an opinion concurring in the judgment. Blackmun, J., filed a dissenting opinion, in which Marshall, J., joined. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

William R. Coulson argued the cause for petitioner.

Edwin S. Kneedler argued the cause for respondent.

Briefs of Counsel, p 1229, infra.

OPINION OF THE COURT

[498 US 193]

Justice **White** delivered the opinion of the Court.

[1a, 2a, 3a] Title 26, § 7201 of the United States Code [26 USCS § 7201] provides that any person "who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof" shall be guilty of a felony. Under 26 USC § 7203 [26 USCS § 7203], "[a]ny person required under this title . . . or by regulations made under authority thereof to make a return . . . who willfully fails to . . . make such return" shall be guilty of a misdemeanor.

[498 US 194]

This case turns on the meaning of the

word "willfully" as used in §§ 7201 and 7203.

I

Petitioner John L. Cheek has been a pilot for American Airlines since 1973. He filed federal income tax returns through 1979 but thereafter ceased to file returns.[1] He also claimed an increasing number of withholding allowances—eventually claiming 60 allowances by mid-1980—and for the years 1981 to 1984 indicated on his W-4 forms that he was exempt from federal income taxes. In 1983, petitioner unsuccessfully sought a refund of all tax withheld by his employer in 1982. Petitioner's income during this period at all times far exceeded the minimum necessary to trigger the statutory filing requirement.

As a result of his activities, petitioner was indicted for 10 violations of federal law. He was charged with six counts of willfully failing to file a federal income tax return for the years 1980, 1981, and 1983 through 1986, in violation of 26 USC § 7203 [26 USCS § 7203]. He was further charged with three counts of willfully attempting to evade his income taxes for the years 1980, 1981, and 1983 in violation of § 7201. In those years, American Airlines withheld substantially less than the amount of tax petitioner owed because of the numerous allowances and exempt status he claimed on his W-4 forms.[2] The tax offenses with which petitioner was charged are specific intent crimes that require the defendant to have acted willfully.

At trial, the evidence established that between 1982 and 1986, petitioner was involved in at least four civil cases that

challenged various aspects of the federal income tax system.[3] In all four of those cases, the plaintiffs were informed by the courts that many of their arguments, including that they were not taxpayers within the meaning of the tax laws, that wages are not income, that the Sixteenth Amendment does not authorize the imposition of an income tax on individuals, and that the Sixteenth Amendment is unenforceable, were frivolous or had been repeatedly rejected by the courts. During this time period, petitioner also attended at least two criminal trials of persons charged with tax offenses. In addition, there was evidence that in 1980 or 1981 an attorney had advised Cheek that the courts had rejected as frivolous the claim that wages are not income.[4]

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[1] Cheek did file what the Court of Appeals described as a frivolous return in 1982.

[2] Because petitioner filed a refund claim for the entire amount withheld by his employer in 1982, petitioner was also charged under 18 USC § 287 [18 USCS § 287] with one count of presenting a claim to an agency of the United States knowing the claim to be false and fraudulent.

[3] In March 1982, Cheek and another employee of the company sued American Airlines to challenge the withholding of federal income taxes. In April 1982, Cheek sued the Internal Revenue Service (IRS) in the United States Tax Court, asserting that he was not a taxpayer or a person for purposes of the Internal Revenue Code and that his wages were not income, and making several other related claims. Cheek and four others also filed an action against the United States and the Commissioner of Internal Revenue in Federal District Court, claiming that withholding taxes from their wages violated the Sixteenth Amendment. Finally, in 1985 Cheek filed claims with the IRS seeking to have refunded the taxes withheld from his wages in 1983 and 1984. When these claims were not allowed, he brought suit in the District Court claiming that the withholding was an unconstitutional taking of his property and that his wages were not income. In dismissing this action as frivolous, the District Court imposed costs and attorneys fees of $1,500 and a sanction under Rule 11 in the amount of $10,000. The Court of Appeals agreed that Cheek's claims were frivolous, reduced the District Court sanction to $5,000, and imposed an additional sanction of $1,500 for bringing a frivolous appeal.

Cheek represented himself at trial and testified in his defense. He admitted that he had not filed personal income tax returns during the years in question. He testified that as early as 1978, he had begun attending seminars sponsored

by, and following the advice of, a group that believes, among other things, that the federal tax system is unconstitutional. Some of the speakers at these meetings were lawyers who purported to give professional opinions about the invalidity of the federal income tax laws. Cheek produced a letter from an attorney stating that the Sixteenth Amendment did not authorize a tax on wages and salaries but only on gain or profit. Petitioner's defense was that, based on the indoctrination he received from this group and from his own study, he sincerely believed that the tax laws were being unconstitutionally enforced and that his actions during the 1980-1986 period were lawful. He therefore argued that he had acted without the willfulness required for conviction of the various offenses with which he was charged.

In the course of its instructions, the trial court advised the jury that to prove "willfulness" the Government must prove the voluntary and intentional violation of a known legal duty, a burden that could not be proved by showing mistake, ignorance, or negligence. The court further advised the jury that an objectively reasonable good-faith misunderstanding of the law would negate willfulness, but mere disagreement with the law would not. The court described Cheek's beliefs about the income tax system[5] and instructed the jury that if it found that Cheek "honestly and reasonably believed that

he was not required to pay income taxes or to file tax returns," App 81, a not guilty verdict should be returned.

After several hours of deliberation, the jury sent a note to the judge that stated in part:

> " 'We have a basic disagreement between some of us as to if Mr. Cheek honestly & reasonably believed that he was not required to pay income taxes.
>
> . . . . .
>
> " 'Page 32 [the relevant jury instruction] discusses good faith mis-

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[4] The attorney also advised that despite the Fifth Amendment, the filing of a tax return was required and that a person could challenge the constitutionality of the system by suing for a refund after the taxes had been withheld, or by putting himself "at risk of criminal prosecution."

[5] "The defendant has testified as to what he states are his interpretations of the United States Constitution, court opinions, common law and other materials he has reviewed. . . . He has also introduced materials which contain references to quotations from the United States Constitution, court opinions, statutes, and other sources.

"He testified he relied on his interpretations and on these materials in concluding that he was not a person required to file income tax returns for the year or years charged, was not required to pay income taxes and that he could claim exempt status on his W-4 forms, and that he could claim refunds of all moneys withheld." App 75-76.

"Among other things, Mr. Cheek contends that his wages from a private employer, American Airlines, does not [sic] constitute income under the Internal Revenue Service laws." Id., at 81.

> understanding & disagreement. Is there any additional clarification you can give us on this point?' " Id., at 85.

The District Judge responded with a supplemental instruction containing the following statements:

> "[A] person's opinion that the tax laws violate his constitutional rights does not constitute a good faith misunderstanding of the law. Furthermore, a person's disagreement with the government's tax collection systems and policies does not constitute a good faith misunderstanding of the law." Id., at 86.

At the end of the first day of deliberation, the jury sent out another note saying that it still could not reach a verdict because " '[w]e are divided on the issue as to if Mr. Cheek honestly & reasonably believed that he was not required to pay income tax.' " Id., at 87. When the jury resumed its deliberations, the District Judge gave the jury an additional instruction. This instruction stated in part that "[a]n honest but unreasonable belief is not a defense and does not negate willfulness," id., at 88, and that "[a]dvice or research resulting in the conclusion that wages of a privately employed person are not income or that the tax laws are unconstitutional is not objectively reasonable and cannot serve as the basis for a good faith misunderstanding of the law defense." Ibid. The court also instructed the jury that "[p]ersistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law." Ibid. Approximately two hours later, the jury returned a verdict finding petitioner guilty on all counts.[6]

Petitioner appealed his convictions, arguing that the District Court erred by instructing the jury that only an objectively reasonable misunderstanding of the law negates the statutory willfulness requirement. The United States Court of Appeals for the Seventh Circuit rejected that contention and affirmed the convictions. 882 F2d 1263 (1989). In prior cases, the Seventh Circuit had made clear that good-faith misunderstanding of the law negates willfulness only if the defendant's beliefs are objectively reasonable; in the Seventh Circuit, even actual ignorance is not a defense unless the defendant's ignorance was itself objectively reasonable. See, e.g., United States v Buckner, 830 F2d 102 (1987). In its opinion in this case, the court noted that several specified beliefs, including the beliefs that the tax laws are unconstitutional and that wages are not income, would not be objectively reasonable.[7] Because the Seventh Circuit's interpre-

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[6] A note signed by all 12 jurors also informed the judge that although the jury found petitioner guilty, several jurors wanted to express their personal opinions of the case and that notes from these individual jurors to the court were "a complaint against the narrow & hard expression under the constraints of the law." Id., at 90. At least two notes from individual jurors expressed the opinion that petitioner sincerely believed in his cause even though his beliefs might have been unreasonable.

[7] The opinion stated, 882 F2d 1263, 1268-1269, n 2 (CA7 1989), as follows:

"For the record, we note that the following beliefs, which are stock arguments of the tax protester movement, have not been, nor ever will be, considered 'objectively reasonable' in this circuit:

"(1) the belief that the sixteenth amendment to the constitution was improperly ratified and therefore never came into being;

"(2) the belief that the sixteenth amendment is unconstitutional generally;

"(3) the belief that the income tax violates the takings clause of the fifth amendment;

"(4) the belief that the tax laws are unconstitutional;

tation of "willfully" as used in these statutes conflicts with the decisions of several other Courts of Appeals, see, e.g., United States v Whiteside, 810 F2d 1306, 1310-1311 (CA5 1987); United States v Phillips, 775 F2d 262, 263-264 (CA10 1985); United States v Aitken, 755 F2d 188, 191-193 (CA1 1985), we granted certiorari, 493 US 1068, 107 L Ed 2d 1016, 110 S Ct 1108 (1990).

II

[4] The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system. See, e.g., United States v Smith, 5 Wheat 153, 182, 5 L Ed 57 (1820) (Livingston, J., dissenting); Barlow v United States, 7 Pet 404, 411, 8 L Ed 728 (1833); Reynolds v United States, 98 US 145, 167, 25 L Ed 2d 244 (1879); Shevlin-Carpenter Co. v Minnesota, 218 US 57, 68, 54 L Ed 930, 30 S Ct 663 (1910); Lambert v California, 355 US 225, 228, 2 L Ed 2d 228, 78 S Ct 240 (1957); Liparota v United States, 471 US 419, 441, 85 L Ed 2d 434, 105 S Ct 2084 (1985) (White, J., dissenting); O. Holmes, The Common Law 47-48 (1881). Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common-law rule has been applied by the Court in numerous cases construing criminal statutes. See, e.g., United States v International Minerals & Chemical Corp., 402 US 558, 29 L Ed 2d 178, 91 S Ct 1697 (1971); Hamling v United States, 418 US 87, 119-124, 41 L Ed 2d 590, 94 S Ct 2887 (1974); Boyce Motor Lines, Inc. v United States, 342 US 337, 96 L Ed 367, 72 S Ct 329 (1952).

[5a] The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend

the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common-law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term "willfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws. In United States v Murdock, 290 US 389, 78 L Ed 381, 54 S Ct 223 (1933), the Court recognized that:

> "Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of con-

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"(5) the belief that wages are not income and therefore are not subject to federal income tax laws;

"(6) the belief that filing a tax return violates the privilege against self-incrimination; and

"(7) the belief that Federal Reserve Notes do not constitute cash or income.

"Miller v United States, 868 F2d 236, 239-41 (7th Cir 1989); Buckner, 830 F2d at 102; United States v Dube, 820 F2d 886, 891 (7th Cir 1987); Coleman v Comm'r, 791 F2d 68, 70-71 (7th Cir 1986); Moore, 627 F2d at 833. We have no doubt that this list will increase with time."

duct." Id., at 396, 78 L Ed 381, 54 S Ct 223.

The Court held that the defendant was entitled to an instruction with respect to whether he acted in good faith based on his actual belief. In Murdock, the Court interpreted the term "willfully" as used in the criminal tax statutes generally to mean "an act done with a bad purpose," id., at 394, 78 L Ed 381, 54 S Ct 223 or with "an evil motive," id., at 395, 78 L Ed 381, 54 S Ct 223.

Subsequent decisions have refined this proposition. In United States v Bishop, 412 US 346, 36 L Ed 2d 941, 93 S Ct 2008 (1973), we described the term "willfully" as connoting "a voluntary, intentional violation of a known legal duty," id., at 360, 36 L Ed 2d 941, 93 S Ct 2008, and did so with specific reference to the "bad faith or evil intent" language employed in Murdock. Still later, United States v Pomponio, 429 US 10, 50 L Ed 2d 12, 97 S Ct 22 (1976) (per curiam), addressed a situation in which several defendants had been charged with willfully filing false tax returns. The jury was given an instruction on willfulness similar to the standard set forth in Bishop. In addition, it was instructed that "'[g]ood motive alone is never a defense where the act done or omitted is a crime.'" Id., at 11, 50 L Ed 2d 12, 97 S Ct 22. The defendants were convicted but the Court of Appeals reversed, concluding that the latter instruction

[498 US 201]

was improper because the statute required a finding of bad purpose or evil motive. Ibid.

We reversed the Court of Appeals, stating that "the Court of Appeals incorrectly assumed that the reference to an 'evil motive' in United States v Bishop, supra, and prior cases," ibid., "requires proof of any motive other than an intentional violation of a known legal duty." Id., at 12, 50 L Ed 2d 12, 97 S Ct 22. As "the other Courts of Appeals that have considered the question have recognized, willfulness in this context simply means a voluntary, intentional violation of a known legal duty." Ibid. We concluded that after instructing the jury on willfulness, "[a]n additional instruction on good faith was unnecessary." Id., at 13, 50 L Ed 2d 12, 97 S Ct 22. Taken together, Bishop and Pomponio conclusively establish that the standard for the statutory willfulness requirement is the "voluntary, intentional violation of a known legal duty."

III

[1b, 2b, 3b] Cheek accepts the Pomponio definition of willfulness, Brief for Petitioner 5, and n 4, 13, 36; Reply Brief for Petitioner 4, 6-7, 11, 13, but asserts that the District Court's instructions and the Court of Appeals' opinion departed from that definition. In particular, he challenges the ruling that a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law, if it is to negate willfulness, must be objectively reasonable. We agree that the Court of Appeals and the District Court erred in this respect.

A

[6] Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. We deal first with the case where the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation he is accused of violating, a case in which there is no claim that the provision

[498 US 202]

at issue is invalid. In such a case, if the Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement. But carrying this burden requires negating a defendant's claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable.

[1c] In this case, if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Of course, in deciding whether to credit Cheek's good-faith belief claim, the jury would be free to consider any admissible evidence from any source showing that Cheek was aware of his duty to file a return and to treat wages as income, including evidence showing his awareness of the relevant provisions of the Code or regulations, of court decisions rejecting his interpretation of the tax law, of authoritative rulings of the Internal Revenue Service, or of any contents of the personal income tax return forms and accompanying instructions that made it plain that wages should be returned as income.[8]

[498 US 203]

[1d, 7] We thus disagree with the Court of Appeals' requirement that a claimed good-faith belief must be objectively reasonable if it is to be considered as possibly negating the Government's evidence purporting to show a defendant's awareness of the legal duty at issue. Knowledge and belief are characteristically questions for the factfinder, in this case the jury. Characterizing a particular belief as not objectively reasonable transforms the inquiry into a legal one and would prevent the jury from considering it. It would of course be proper to exclude evidence having no relevance or probative value with respect to willfulness; but it is not contrary to common sense, let alone impossible, for a defendant to be ignorant of his duty based on an irrational belief that he has no duty, and forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision. Cf. Francis v Franklin, 471 US 307, 85 L Ed 2d 344, 105 S Ct 1965 (1985); Sandstrom v Montana, 442 US 510, 61 L Ed 2d 39, 99 S Ct 2450 (1979); Morissette v United States, 342 US 246, 96 L Ed 288, 72 S Ct 240 (1952). It is common ground that this Court, where possible, interprets congressional enactments so as to avoid raising serious constitutional questions. See, e.g., Edward J. DeBartolo Corp. v Florida Gulf Coast Building & Construction Trades Council, 485 US 568, 575, 99 L Ed 2d 645, 108 S Ct 1392 (1988); Crowell v Benson, 285 US 22, 62, and n 30, 76 L Ed 598, 52 S Ct 285 (1932); Public Citizen v Department of Justice, 491 US 440, 465-466, 105 L Ed 2d 377, 109 S Ct 2558 (1989).

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[8] Cheek recognizes that a "defendant who knows what the law is and who disagrees with it . . . does not have a bona fide misunderstanding defense," but asserts that "a defendant who has a bona fide misunderstanding of [the law] does not 'know' his legal duty and lacks willfulness." Brief for Petitioner 29, and n 13. The Reply Brief for Petitioner, at 13, states: "We are in no way suggesting that Cheek or anyone else is immune from criminal prosecution if he knows what the law is, but believes it should be otherwise, and therefore violates it." See also Tr of Oral Arg 9, 11, 12, 15, 17.

[3c] It was therefore error to instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or to pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be. Of course, the more unreasonable the asserted

beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws and will find that the Government has carried its burden of proving knowledge.

B

[2c, 5b, 8a] Cheek asserted in the trial court that he should be acquitted because he believed in good faith that the income tax law is unconstitutional as applied to him and thus could not legally impose any duty upon him of which he should have been aware.[9] Such a submission is unsound, not because

Cheek's constitutional arguments are not objectively reasonable or frivolous, which they surely are, but because the

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[9] **[8b]** In his opening and reply briefs and at oral argument, Cheek asserts that this case does not present the issue whether a claim of unconstitutionality would serve to negate willfulness and that we need not address the issue. Brief for Petitioner 13; Reply Brief for Petitioner 5, 11, 12; Tr of Oral Arg 6, 13. Cheek testified at trial, however, that "[i]t is my belief that the law is being enforced unconstitutionally." App 60. He also produced a letter from counsel advising him that " 'Finally you make a valid contention . . . that Congress' power to tax comes from Article I, Section 8, Clause 1 of the U.S. Constitution, and not from the Sixteenth Amendment and that the [latter], construed with Article I, Section 2, Clause 3, never authorized a tax on wages and salaries, but only on gain and profit." Id., at 57. We note also that the jury asked for "the portion [of the transcript] wherein Mr. Cheek stated he was attempting to test the constitutionality of the income tax laws," Tr 1704, and that the trial judge later instructed the jury that an opinion that the tax laws violate a person's constitutional rights does not constitute a good-faith misunderstanding of the law. We also note that at oral argument Cheek's counsel observed that "personal belief that a known statute is unconstitutional smacks of knowledge with existing law, but disagreement with it." Tr of Oral Arg 5. He also opined:

"If the person believes as a personal belief that known—law known to them [sic] is unconstitutional, I submit that that would not be a defense, because what the person is really saying is I know what the law is, for constitutional reasons I have made my own determination that it is invalid. I am not suggesting that that is a defense.

"However, if the person was told by a lawyer or by an accountant erroneously that the statute is unconstitutional, and it's my professional advice to you that you don't have to follow it, then you have got a little different situation. This is not that case." Id., at 6.

Given this posture of the case, we perceive no reason not to address the significance of Cheek's constitutional claims to the issue of willfulness.

Murdock-Pomponio line of cases does not support such a position. Those cases construed the willfulness requirement in the criminal provisions of the Internal Revenue Code to require proof of knowledge of the law. This was because in "our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law," and " '[i]t is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care.' " United States v Bishop, 412 US 346, 360-361, 36 L Ed 2d 941, 93 S Ct 2008 (1973) (quoting Spies v United States, 317 US 492, 496, 87 L Ed 418, 63 S Ct 364 (1943)).

[2d] Claims that some of the provisions of the tax code are unconstitutional are submissions of a different order.[10] They do not arise from innocent mistakes caused by the complexity of the Internal Revenue Code. Rather, they reveal full knowledge of the provisions at issue and a studied conclusion, however wrong, that those provisions are invalid and unenforceable.

Thus in this case, Cheek paid his taxes for years, but after attending various seminars and based on his own study, he concluded that the income tax laws could not constitutionally require him to pay a tax.

We do not believe that Congress contemplated that such a taxpayer, without risking criminal prosecution, could ignore the duties imposed upon him by the Internal Revenue Code and refuse to utilize the mechanisms provided by Congress to present his claims of invalidity to the courts and to abide by their decisions. There is no doubt that Cheek, from year to year, was free to pay the tax that the law purported to require, file for a refund and, if denied, present his claims of invalidity, constitutional or otherwise, to the courts. See 26 USC § 7422 [26 USCS § 7422]. Also, without paying the tax, he could have challenged claims of tax deficiencies in the Tax Court, § 6213, with the right to appeal to a higher court if unsuccessful. § 7482(a)(1). Cheek took neither course in some years, and when he did was unwilling to accept the outcome. As we see it, he is in no position to claim that his good-faith belief about the validity of the Internal Revenue Code negates willfulness or provides a defense to criminal prosecution under §§ 7201 and 7203. Of course, Cheek was free in this very case to present his claims of invalidity and have them adjudicated, but like defendants in criminal cases in other contexts, who "willfully" refuse to comply with the duties placed upon them by the law, he must take the risk of being wrong.

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[10] In United States v Murdock, 290 US 389, 78 L Ed 381, 54 S Ct 223 (1933), discussed supra, at 200, 112 L Ed 2d, at 628-629, the defendant Murdock was summoned to appear before a revenue agent for examination. Questions were put to him, which he refused to answer for fear of self-incrimination under state law. He was indicted for refusing to give testimony and supply information contrary to the pertinent provisions of the Internal Revenue Code. This Court affirmed the reversal of Murdock's conviction, holding that the trial court erred in refusing to give an instruction directing the jury to consider Murdock's asserted claim of a good-faith, actual belief that because of the Fifth Amendment he was privileged not to answer the questions put to him. It is thus the case that Murdock's asserted belief was grounded in the Constitution, but it was a claim of privilege not to answer, not a claim that any provision of the tax laws were unconstitutional, and not a claim for which the tax laws provided procedures to entertain and resolve. Cheek's position at trial, in contrast, was that the tax laws were unconstitutional as applied to him.

[2e, 3d, 9a] We thus hold that in a case like this, a defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness and need not be heard by the jury, and, if they are, an instruction to disregard them would be proper. For this purpose, it makes no difference whether the claims of invalidity are frivolous or have substance. It was therefore not error in this case for the District Judge to instruct the jury not to consider Cheek's claims that the tax laws were unconstitutional. However, it was error for the court to instruct

the jury that petitioner's asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code should not be considered by the jury in determining whether Cheek had acted willfully.[11]

IV

For the reasons set forth in the opinion above, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINIONS

Justice **Scalia,** concurring in the judgment.

I concur in the judgment of the Court because our cases have consistently held that the failure to pay a tax in the good-faith belief that it is not legally owing is not "willful." I do not join the Court's opinion because I do not agree with the test for willfulness that it directs the Court of Appeals to apply on remand.

As the Court acknowledges, our opinions from the 1930's to the 1970's have interpreted the word "willfully" in the criminal tax statutes as requiring the "bad purpose" or "evil motive" of "intentional[ly] violat[ing] a known legal duty." See, e.g., United States v Pomponio, 429 US 10, 12, 50 L Ed 2d 12, 97 S Ct 22 (1976); United States v Murdock, 290 US 389, 394-395, 78 L Ed 381, 54 S Ct 223 (1933). It seems to me that today's opinion squarely reverses that long-established statutory construction when it says that a good-faith erroneous belief in the unconstitutionality of a tax law is no defense. It is quite impossible to say that a statute which

one believes unconstitutional represents a "known legal duty." See Marbury v Madison, 1 Cranch 137, 177-178, 2 L Ed 60 (1803).

Although the facts of the present case involve erroneous reliance upon the Constitution in ignoring the otherwise "known legal duty" imposed by the tax statutes, the Court's new interpretation applies also to erroneous reliance upon a tax statute in ignoring the otherwise "known legal duty" of a regulation, and to erroneous reliance upon a regulation in ignoring the otherwise "known legal duty" of a tax assessment. These situations as well meet the opinion's crucial test of "reveal[ing] full knowledge of the provisions at issue and a studied conclusion, however wrong, that those provisions are invalid and unenforceable," ante, at 205-206, 112 L Ed 2d, at 632. There is, moreover, no rational basis for saying that a "willful" violation is established by full knowledge of a statutory requirement, but is not established by full knowledge of a requirement explicitly imposed by regulation or order. Thus, today's opinion works a revolution in past practice, subjecting to criminal penalties taxpayers who do not comply with Treasury Regulations that are in their view contrary to the Internal Revenue Code, Treasury Rulings that are in their view contrary to the regulations, and even IRS auditor pronouncements that are in their view contrary to Treasury Rulings. The law already provides considerable incentive for taxpayers to be careful in ignoring any official assertion of tax liability, since it contains civil penalties that apply even in the event of a good-faith mistake, see, e.g., 26 USC §§ 6651, 6653 [26 USCS §§ 6651, 6653]. To impose in addition *criminal* penalties for misinterpretation of such a complex body of law is a startling innovation indeed.

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[11] **[9b]** Cheek argues that applying to him the Court of Appeals' standard of objective reasonableness violates his rights under the First, Fifth, and Sixth Amendments of the Constitution. Since we have invalidated the challenged standard on statutory grounds, we need not address these submissions.

I find it impossible to understand how one can derive from the lonesome word "willfully" the proposition that belief in the nonexistence of a textual prohibition excuses liability, but belief in the invalidity (i.e., the legal nonexistence) of a textual prohibition does not. One may say, as the law does

[498 US 209]

in many contexts, that "willfully" refers to consciousness of the act but not to consciousness that the act is unlawful. See, e.g., American Surety Co. of New York v Sullivan, 7 F2d 605, 606 (CA2 1925) (L. Hand, J.); cf. United States v International Minerals & Chemical Corp., 402 US 558, 563-565, 29 L Ed 2d 178, 91 S Ct 1697 (1971). Or alternatively, one may say, as we have said until today with respect to the tax statutes, that "willfully" refers to consciousness of both the act *and* its illegality. But it seems to me impossible to say that the word refers to consciousness that some legal text exists, without consciousness that that legal text is binding, i.e., with the good-faith belief that it is not a valid law. Perhaps such a test for criminal liability would make sense (though in a field as complicated as federal tax law, I doubt it), but some text other than the mere word "willfully" would have to be employed to describe it—and that text is not ours to write.

Because today's opinion abandons clear and longstanding precedent to impose criminal liability where taxpayers have had no reason to expect it, because the new contours of criminal liability have no basis in the statutory text, and because I strongly suspect that those new contours make no sense even as a policy matter, I concur only in the judgment of the Court.

Justice **Blackmun,** with whom Justice **Marshall** joins, dissenting.

It seems to me that we are concerned in this case not with "the complexity of the tax laws," ante, at 200, 112 L Ed 2d, at 628, but with the income tax law in its most elementary and basic aspect: Is a wage earner a taxpayer and are wages income?

The Court acknowledges that the conclusively established standard for willfulness under the applicable statutes is the "'voluntary, intentional violation of a known legal duty.'" Ante, at 201, 112 L Ed 2d, at 629. See United States v Bishop, 412 US 346, 360, 36 L Ed 2d 941, 93 S Ct 2008 (1973), and United States v Pomponio, 429 US 10, 12, 50 L Ed 2d 12, 97 S Ct 22 (1976). That being so, it is incomprehensible to me how, in this day, more than 70 years after the institution of our

[498 US 210]

present federal income tax system with the passage of the Income Tax Act of 1913, 38 Stat 166, any taxpayer of competent mentality can assert as his defense to charges of statutory willfulness the proposition that the wage he receives for his labor is not income, irrespective of a cult that says otherwise and advises the gullible to resist income tax collections. One might note in passing that this particular taxpayer, after all, was a licensed pilot for one of our major commercial airlines; he presumably was a person of at least minimum intellectual competence.

The District Court's instruction that an objectively reasonable and good-faith misunderstanding of the law negates willfulness lends further, rather than less, protection to this defendant, for it adds an additional hurdle for the prosecution to overcome. Petitioner should be grateful for this further protection, rather than be opposed to it.

This Court's opinion today, I fear, will encourage taxpayers to cling to frivolous views of the law in the hope of convincing a jury of their sincerity. If that ensues, I suspect we have gone beyond the limits of common sense.

While I may not agree with every word the Court of Appeals has enunciated in its opinion, I would affirm its judgment in this case. I therefore dissent.

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., et al., Petitioners

v

UNITED DISTRIBUTION COMPANIES et al. (No. 89-1452)

FEDERAL ENERGY REGULATORY COMMISSION, Petitioner

v

UNITED DISTRIBUTION COMPANIES et al. (No. 89-1453)

498 US 211, 112 L Ed 2d 636, 111 S Ct 615

[Nos. 89-1452 and 89-1453]

Argued November 5, 1990. Decided January 8, 1991.

Decision: FERC held (1) to have authority, with respect to natural gas already produced, both to set single ceiling price and to preauthorize service abandonment by producers, and (2) to have no duty, in particular rule-making proceeding, to rule on "take-or-pay" contracts.

SUMMARY

Congress enacted the Natural Gas Policy Act of 1978 (NGPA) (15 USCS §§ 3301 et seq.) as a response to the problem of shortages in the interstate market for natural gas. Sections 104 and 106 of the NGPA (15 USCS §§ 3314, 3316) carried over price ceilings established by the former Federal Power Commission (FPC), subject to adjustment for inflation, for 15 categories (or "vintages") of already-produced (or "old") natural gas. However, in §§ 104(b)(2) and 106(c) of the NGPA (15 USCS §§ 3314(b)(2), 3316(c)), the Federal Energy Regulatory Commission (FERC)—the successor agency to the FPC—was authorized to prescribe a maximum lawful ceiling price for "any" sale of old gas "or category thereof, as determined by" the FERC, so long as such price was (1) higher than the maximum lawful price which would otherwise be applicable under the NGPA, and (2) "just and reasonable" within the meaning of the Natural Gas Act of 1938 (15 USCS §§ 717 et seq.). In 1986, following the issuance of a notice of proposed rule making and the holding of public hearings, the FERC issued two orders. The orders

Briefs of Counsel, p 1230, infra.

revised the pricing system for old gas by collapsing the price ceilings for the 15 existing vintages into a single ceiling price, which price (1) was equal to the highest of the ceilings then in effect for old gas, adjusted for inflation, and (2) exceeded the then-current market price for old gas. In addition, the orders provided that a gas producer could abandon an existing obligation to provide old gas to a current customer where the parties could not come to terms after a required negotiation process, so long as the producer both had executed a new contract with another purchaser and had given its old customer 30 days' notice. The FERC further stated in its 1986 orders that it would not resolve the issue of "take-or-pay" natural gas contracts—which contracts obligate a pipeline to purchase a specified volume of gas at a specified price and, if it is unable to do so, to pay for that volume—since (1) the FERC was already addressing the issue in a separate proceeding, (2) the required negotiation process would resolve many "take-or-pay" disputes, and (3) the pipelines' overall "take-or-pay" exposure would be reduced as old-gas reserves expanded as a result of the FERC's 1986 orders. On petition for review, the United States Court of Appeals for the Fifth Circuit, vacating the orders, expressed the view that (1) Congress did not intend to give the FERC the authority to set a single ceiling price for old gas under §§ 104(b)(2) and 106(c); (2) the FERC lacked the authority to provide for across-the-board, preauthorized abandonment of natural gas service under § 7(b) of the Natural Gas Act of 1938 (NGA) (15 USCS § 717f(b)), which provision sets forth the requirements under which natural gas service may be abandoned; and (3) the FERC's failure to address the "take-or-pay" issue in the rule making under consideration was unwarranted (885 F2d 209).

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and sustained the FERC's orders in their entirety. In an opinion by White, J., expressing the unanimous view of the eight participating members of the court, it was held that (1) the FERC had the authority to set a single ceiling price for multiple vintages of old natural gas under §§ 104(b)(2) and 106(c) of the NGPA, because (a) insofar as the term "any," as used in §§ 104(b)(2) and 106(c), encompasses "all," nothing prevented the FERC from either increasing the ceiling price for every old-gas vintage or setting the ceiling price applicable to each vintage at the same level, such as by setting one price equivalent to the highest previous ceiling, (b) the "just and reasonable" requirement of §§ 104(b)(2) and 106(c) accorded the FERC broad rate-making authority that its decision to set a single ceiling did not exceed, and (c) the plain meaning of §§ 104(b)(2) and 106(c) confirmed the view that Congress' intent in enacting the NGPA was to deal directly with new-gas production, but to leave old-gas pricing within the discretion of the FERC to alter as conditions warranted; (2) the FERC possessed the power under § 7(b) of the NGA to authorize producers' abandonment of their obligations to provide old gas to current customers, subject to the required negotiation process, since the FERC's orders fully comported with the requirements for service abandonment set forth in § 7(b), in that (a) the orders gave FERC's "permission and approval" in a general, prospective, and conditional manner, (b) the orders, by indicating the resulting advantages to purchasers, producers, and the market, included the necessary findings that "present or future public interest or necessity" allowed the conditional abandonment which the FERC prescribed, and (c) the FERC held hearings before promulgating the orders, and thereby discharged its duty to hold a "due hearing"; and (3) the FERC did not have a duty to address directly the issue of "take-or-pay" contracts, where (a) the FERC stated in its orders in the proceeding that it had chosen not to deal directly with the "take-or-pay" issue primarily because the issue was being addressed in a separate proceeding, (b) the record in the proceeding showed that approximately two-thirds of existing "take-or-pay" contracts did not involve old gas, and (c) the FERC articulated rational grounds for concluding that its orders in the proceeding would do more to ameliorate the "take-or-pay" problem than worsen it.

Kennedy, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Energy § 44; Public Service Commissions § 27; Statutes § 166 — Federal Energy Regulatory Commission orders — authority to set single ceiling price — Natural Gas Policy Act — construction

1a-1f. The Federal Energy Regulatory Commission (FERC) has the authority to set a single ceiling price for multiple categories, or "vintages," of already-produced, or "old," natural gas under §§ 104(b)(2) and 106(c) of the Natural Gas Policy Act

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

64 Am Jur 2d, Public Utilities §§ 240, 320-328

24 Federal Procedure, L Ed, Natural and Marine Resources §§ 56:85, 56:480

15 USCS §§ 717f(b), 3314(b)(2), 3316(c)

US L Ed Digest, Energy §§ 41, 44; Public Service Commissions §§ 26, 27, 31

Index to Annotations, Federal Energy Regulatory Commission; Gas and Oil; Public Service Commissions

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCE

What constitutes abandonment of facilities or service, under § 7(b) of Natural Gas Act (15 USCS § 717f(b)). 61 ALR Fed 454.

of 1978 (NGPA) (15 USCS §§ 3314(b)(2), 3316(c)), which provisions allow the FERC to prescribe a maximum lawful ceiling price for "any" old gas "or category thereof, as determined by" the FERC, so long as such price is (1) higher than the maximum lawful price which would otherwise be applicable under the NGPA, and (2) "just and reasonable" within the meaning of the Natural Gas Act of 1938 (15 USCS §§ 717 et seq.); insofar as the term "any," as used in §§ 104(b)(2) and 106(c), encompasses "all," nothing in the language of §§ 104(b)(2) and 106(c) prevents the FERC from either increasing the ceiling price for every old-gas vintage or setting the ceiling price applicable to each vintage at the same level, such as by setting one price equivalent to the highest previous ceiling; further, the "just and reasonable" requirement of §§ 104(b)(2) and 106(c) accords the FERC broad rate-making authority that its decision to set a single ceiling does not exceed, and thus the FERC's decision cannot be deemed either arbitrary, capricious, or manifestly contrary to the NGPA; the plain meaning of §§ 104(b)(2) and 106(c) confirms the view that Congress' intent in enacting the NGPA was to deal directly with new-gas production, but to leave old-gas pricing within the discretion of the FERC to alter as conditions warranted.

Energy § 41; Public Service Commissions § 26 — Federal Energy Regulatory Commission — power to preauthorize service abandonment — Natural Gas Act

2a-2e. The Federal Energy Regulatory Commission (FERC) possesses the power, under § 7(b) of the Natural Gas Act of 1938 (NGA) (15 USCS § 717f(b)), to authorize—pursuant to orders promulgated in a single rule-making proceeding—the abandonment by natural gas producers of their obligations to provide already-produced, or "old," natural gas to current customers, subject to the conditions that (1) the parties cannot come to terms after a required negotiation process established by the FERC's orders, (2) a producer executes a new contract with another purchaser, and (3) the producer gives its old customer 30 days' notice; the FERC's orders fully comport with the requirements for service abandonment set forth in § 7(b) of the NGA, where (1) the orders gave the FERC's "permission and approval" in a general, prospective, and conditional manner, (2) the orders, by indicating the resulting advantages to purchasers, producers, and the market, included the necessary findings that "present or future public interest or necessity" allowed the conditional abandonment which the FERC prescribed, and (3) the FERC held both a notice-and-comment hearing and an oral hearing before promulgating the orders, and thereby discharged its duty to hold a "due hearing"; § 7(b) does not mandate individualized proceedings involving interested parties before a specific abandonment can take place, and nothing in § 7(b) prevents the FERC from giving advance approval of abandonment.

Public Service Commissions § 31 — Federal Energy Regulatory Commission — duty to rule on "take-or-pay" contracts for natural gas

3a-3e. The Federal Energy Regulatory Commission (FERC) does not have a duty, in a rule-making proceeding conducted for the purpose of revising the pricing system for already-produced, or "old," natural gas, to address directly the issue of "take-or-pay" contracts—which contracts obligate a pipeline to purchase a specified volume of gas at a specified price and, if it is unable to do so, to pay for that volume—where (1) the FERC states in its orders in the proceeding that it had chosen not to deal directly with the "take-or-pay" issue primarily because the issue was being addressed in a separate FERC proceeding, (2) the record in the proceeding shows that approximately two-thirds of existing "take-or-pay" contracts do not involve old gas, and (3) the FERC articulates rational grounds for concluding that its orders in the proceeding would do more to ameliorate the "take-or-pay" problem than worsen it, including that (a) a negotiation process required by the orders prior to a producer's abandonment of a current customer's contract would encourage the renegotiation of "take-or-pay" contractual provisions, and (b) the resulting release of "old" natural gas would reduce the market price for new gas and thus reduce pipelines' aggregate liability.

Statutes § 83 — construction in absence of ambiguity

4. If a federal statute is clear and unambiguous, that is the end of the matter, for courts, as well as federal agencies, must give effect to the unambiguously expressed intent of Congress.

Energy § 44; Public Service Commissions § 27 — Federal Energy Regulatory Commission orders — justness of single ceiling price for natural gas

5. The Federal Energy Regulatory Commission (FERC), in its promulgation of orders which set a single ceiling price for multiple categories of already-produced, or "old," natural gas at a level equal to the highest of the ceilings then in effect for old gas, will not be held to have set a ceiling price which is unjustly and impermissibly high, where the FERC (1) denies having conceded that actual collection of the new price would not be just, and (2) points out that its ceiling price falls squarely within the "zone of reasonableness" mandated by the Natural Gas Act of 1938 (15 USCS §§ 717 et seq.); the FERC's requirement in such orders of a negotiation process prior to a natural gas producer's abandonment of a current customer's contract does not amount to an acknowledgment that the new ceiling price is in fact unreasonable, because there is nothing incompatible between the belief that a price is reasonable and the belief that it ought not to be imposed without prior negotiations.

Energy § 44; Public Service Commissions § 27 — Federal Energy Regulatory Commission orders — setting of single ceiling price for natural gas as deregulation

6. Orders of the Federal Energy Regulatory Commission (FERC) which set a single ceiling price for 15 categories, or "vintages," of already-produced, or "old," natural gas at a level equal to the highest of the ceilings then in effect for old gas, adjusted for inflation—which ceiling exceeded the then-current market price for old gas—do not deregulate the price of old gas in any legally relevant sense, where the FERC's orders (1) adopt an approved pricing formula, (2) set a maximum price, and (3) expressly reject proposals that it truly deregulate by eliminat-

ing any ceiling for old gas whatsoever; deregulation does not result simply because the FERC's given ceiling price for natural gas may be above the market price; the United States Supreme Court will reject the contention that no order deregulating the price of old gas can be deemed "just and reasonable" within the meaning of the Natural Gas Act of 1938 (15 USCS §§ 717 et seq.).

Energy § 41; Public Service Commissions § 32 — required findings by Federal Energy Regulatory Commission — abandonment of natural gas service

7. Section 7(b) of the Natural Gas Act of 1938 (15 USCS § 717f(b)), which provision requires natural gas companies to obtain the permission of the Federal Energy Regulatory Commission (FERC) before abandoning any obligations to provide natural gas service, does not compel the FERC to make specific findings as to the present or future public interest or necessity of every such abandonment when the issues involved are general.

Administrative Law § 74 — rule making to resolve general issues

8. General factual issues may be resolved by a federal administrative agency as fairly through rule making as by considering specific evidence when the questions under consideration by the agency are not unique to the particular case.

Administrative Law § 26 — rulemaking authority — enabling statute

9. Even where a federal administrative agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rule-making authority to determine issues that do not require case-by-case consideration.

Administrative Law § 56 — agency discretion

10. A federal administrative agency enjoys broad discretion in determining how best to handle related yet discrete issues in terms of procedures and priorities.

SYLLABUS BY REPORTER OF DECISIONS

In response to ongoing natural gas shortages, Congress enacted the Natural Gas Policy Act of 1978 (NGPA), which, inter alia, established higher price ceilings for "new" gas in order to encourage production and carried over the pre-existing system of "vintage" price ceilings for "old" gas in order to protect consumers. However, recognizing that some of the vintage ceilings might be too low, Congress, in § 104(b)(2) of the NGPA, authorized the Federal Energy Regulatory Commission to raise them whenever traditional pricing principles under the Natural Gas Act of 1938 (NGA) would dictate a higher price. After the new production incentives resulted in serious market distortions, the Commission issued its Order No. 451, which, among other things, collapsed the existing vintage price categories into a single classification and set forth a single new ceiling that exceeded the then-current market price for old gas; established a "Good Faith Negotiation" (GFN) procedure that producers must follow before they can collect a higher price from current pipeline customers, whereby producers may in certain circumstances abandon their existing obligations if the parties cannot come to terms; and rejected suggestions that the Commission undertake to resolve in the Order No. 451 proceeding the issue of take-or-pay provisions in certain gas contracts. Such provisions obligate a pipeline to purchase a specified volume of gas at a specified price, and, if it is unable to do so, to pay for that volume. They have caused significant hardships for gas purchasers under current market conditions. On review, the Court of Appeals vacated Order No. 451, ruling that the Commission lacked authority to set a single ceiling price for old gas under § 104(b)(2) of the NGPA; that the ceiling price actually set was unreasonable; that the Commission lacked authority to provide for across-the-board, preauthorized abandonment under § 7(b) of the NGA; and that the Commission should have addressed the take-or-pay issue in this proceeding, even though it was considering the matter in a separate proceeding.

Held: Order No. 451 does not exceed the Commission's authority under the NGPA.

(a) Section 104(b)(2) of the NGPA—which authorizes the Commission to prescribe "*a* . . . ceiling price, applicable to . . . *any* natural gas *(or category thereof, as determined by the Commission)* . . . , if such price" is (1) "higher than" the old vintage ceilings, and (2) "just and reasonable" under the NGA (emphasis added)—clearly and unambiguously gives the Commission authority to set a single ceiling price for old gas. The NGPA's structure—which created detailed incentives for new gas, but carefully preserved the old gas vintaging scheme—does not require a contrary conclusion, since the statute's bifurcated approach implies no more than that Congress found the need to encourage new gas production sufficiently pressing to deal with the matter directly, but was content to leave old gas pricing within the Commission's discretion to alter as conditions warranted. Further, the Commission's decision to set a single ceiling fully accords with the two restrictions § 104(b)(2) does establish, since the "higher than" requirement does nothing to prevent the Commission from consolidating existing categories and setting one price, and since the "just and reasonable" requirement preserves the pricing flexibility that the Commission historically exercised and accords the Commission broad ratemaking authority that its decision to set a single ceiling does not exceed. Respondents' contention that the Commission's institution of the GFN process amounts to an acknowledgment of the unreasonableness of the new ceiling price is rejected, since there is nothing incompatible in the belief that a price is reasonable and the belief that it ought not to be imposed without prior negotiations. An otherwise lawful rate should not be disallowed because additional safeguards accompany it. Respondents' objection that no order "deregulating" the price of old gas can be deemed just and reasonable is also rejected, since Order No. 451 does not deregulate in any legally relevant sense, and it cannot be concluded that deregulation results simply because a given ceiling price may be above the market price.

(b) Order No. 451's abandonment procedures fully comport with the requirements of § 7(b) of the NGA, which, inter alia, prohibits a gas producer from abandoning its contractual service obligations to a purchaser unless the Commission has (1) granted its "permission and approval" of the abandonment; (2) make a "finding" that "present or future public convenience or necessity permit such abandonment"; and (3) held a "hearing" that is "due." First, although Order No. 451's approval of the abandonment at issue is not specific to any single abandonment but is instead general, prospective, and conditional, nothing in § 7(b) prevents the Commission from giving advance approval or mandates individualized proceedings involving interested parties before a specific abandonment can take place. Second, in reviewing "all relevant factors involved in determining the overall public interest," and in finding that pre-authorized abandonment under the GFN regime would generally protect purchasers, safeguard producers, and serve the market by releasing previously unused reserves of old gas, the Commission made the necessary "finding" required by § 7(b), which does not compel the agency to make "specific findings" with regard to every abandonment when the issues involved are general. Finally, the Commission discharged its § 7(b) duty to hold a "due hearing," since, before promulgating Order No. 451, it held a notice and comment hearing and an oral hearing. See, e. g., Heckler v Campbell, 461 US 458, 467, 76 L Ed 2d 66, 103 S Ct 1952. United Gas Pipe Line Co. v McCombs, 442 US 529, 61 L Ed 2d 54, 99 S Ct 2461, distinguished. Respondents cannot claim that the Commission made no provision for individual determinations under its abandonment procedures where appropriate, since Order No. 451 authorizes a purchaser objecting to a given abandonment on the grounds that the conditions the agency has set forth have not been met to file a complaint with the Commission.

(c) The Court of Appeals erred in ruling that the Commission had a duty to address the take-or-pay problem more fully in this proceeding. The court clearly overshot its mark if it meant to order the Commission to resolve the problem, since an agency enjoys broad discretion in determining how best to handle related yet discrete issues in terms of procedures, and it is likely that the Commission's separate proceeding addressing the matter will generate relevant data more effectively. The court likewise erred if it meant that the Commission should have addressed the take-or-pay problem insofar as Order No. 451 "exacerbated" it, since an agency need not solve every problem before it in the same proceeding, and the Commission has articulated rational grounds for concluding that the order would do more to ameliorate the problem than worsen it. This Court is neither inclined nor prepared to second-guess the Commission's reasoned determination in this complex area.

885 F2d 209, reversed.

White, J., delivered the opinion of the Court, in which all other Members joined, except Kennedy, J., who took no part in the decision of the case.

APPEARANCES OF COUNSEL

Rex E. Lee argued the cause for private petitioners.

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Roberta Lee Halladay argued the cause for respondents.

Briefs of Counsel, p 1230, infra.

OPINION OF THE COURT

[498 US 214]

Justice **White** delivered the opinion of the Court.

[1a, 2a, 3a] These cases involve the validity of two orders, No. 451 and No. 451-A, promulgated by the Federal Energy Regulatory Commission (Commission) to make substantial changes in the national market for natural gas. On petitions for review, a divided panel of the Court of Appeals for the Fifth Circuit vacated the orders as exceeding the Commission's authority under the Natural Gas Policy Act of 1978 (NGPA), 92 Stat 3352, 15 USC § 3301 et seq. [15 USCS §§ 3301 et seq.]. 885 F2d 209 (1989). In light of the economic interests at stake, we granted certiorari and consolidated the cases for briefing and oral argument.

[498 US 215]

496 US 904, 110 L Ed 2d 266, 110 S Ct 2585 (1990). For the reasons that follow, we reverse and sustain the Commission's orders in their entirety.

I

The Natural Gas Act of 1938 (NGA), 52 Stat 821, 15 USC § 717 et seq. [15 USCS §§ 717 et seq.], was Congress' first attempt to establish nationwide natural gas regulation. Section 4(a) mandated that the present Commission's predecessor, the Federal Power Commission,[1] ensure that all rates and charges requested by a natural gas company for the sale or transportation of natural gas in interstate commerce be "just and reasonable." 15 USC § 717c(a) [15 USCS § 717c(a)]. Section 5(a) further provided that the Commission order a "just and reasonable rate, charge, classification, rule, regulation, practice, or contract" connected with the sale or transportation of gas whenever it determined that any of these standards or actions were "unjust" or "unreasonable." 15 USC § 717d(a) [15 USCS § 717d(a)].

Over the years the Commission adopted a number of different approaches in applying the NGA's "just and reasonable" standard. See Public Serv Comm'n of NY v Mid-Louisiana Gas Co. 463 US 319, 327-331, 77 L Ed 2d 668, 103 S Ct 3024 (1983). Initially the Commission, construing the NGA to regulate gas sales only at the downstream end of interstate pipelines, proceeded on a company-by-company basis with reference to the historical costs each pipeline operator incurred in acquiring and transporting gas to its customers. The Court upheld this approach in FPC v Hope Natural Gas Co. 320 US 591, 88 L Ed 333, 64 S Ct 281 (1944), explaining that the NGA did not bind the Commission to "any single formula or combination of formulae in determining rates." Id., at 602, 88 L Ed 333, 64 S Ct 281.

The Commission of necessity shifted course in response to our decision in Phillips Petroleum Co. v Wisconsin, 347 US 672, 98 L Ed 1035, 74 S Ct 794 (1954). Phillips interpreted the NGA to require that the Commission regulate not just the downstream rates

[498 US 216]

charged by large interstate pipeline concerns, but also upstream sales rates charged by thousands of independent gas producers. Id., at 682, 98 L Ed 1035, 74 S Ct 794. Faced with the regulatory burden that resulted, the Commission eventually opted for an "area rate" approach for the independent producers while retaining the company-by-company method for the interstate pipelines. First articulated in 1960, the area rate approach established a single rate schedule for all gas produced in a given region based upon historical production costs and rates of return. See Statement of General Policy No. 61-1, 24 FPC 818 (1960). Each area rate schedule included a two-tiered price ceiling: the lower ceiling for gas prices established in "old" gas contracts and a higher ceiling for gas prices set in "new" contracts. Id., at 819. The new two-tiered system was termed "vintage pricing" or "vintaging." Vintaging rested on the premise that the higher ceiling price for new gas production would provide incentives that would be superfluous for old gas already flowing because "price could not serve as an incentive, and since any price above average historical costs, plus an appropriate return, would merely confer windfalls." Permian Basin Area Rate Cases, 390 US 747, 797, 20 L Ed 2d 312, 88 S Ct 1344 (1968). The balance the Commission hoped to strike was the development of gas production through the "new" gas ceilings while ensuring continued protection of consumers through the "old" gas price limits. At the same time the Commission anticipated that the differences in price levels would be "reduced and eventually eliminated as subsequent experience brings about revisions in the prices in the various areas." Statement of General Policy, supra, at 819. We upheld the vintage pricing system in Permian Basin, holding that the courts lacked the authority to set aside any Commission rate that was within the " 'zone of reasonableness.' " 390 US, at 797, 20 L Ed 2d 312, 88 S Ct 1344 (citation omitted).

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[1] The term "Commission" will refer to both the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission.

By the early 1970's, the two-tiered area rate approach no longer worked. Inadequate production had led to gas shortages which in turn had prompted a rapid rise in prices. Accordingly,

the Commission abandoned vintaging in favor of a single national rate designed to encourage production. Just and Reasonable National Rates for Sales of Natural Gas, 51 FPC 2212 (1974). Refining this decision, the Commission prescribed a single national rate for all gas drilled after 1972, thus rejecting an earlier plan to establish different national rates for succeeding biennial vintages. Just and Reasonable National Rates for Sales of Natural Gas, 52 FPC 1604, 1615 (1974). But the single national pricing scheme did not last long either. In 1976 the Commission reinstated vintaging with the promulgation of Order No. 770. National Rates for Jurisdictional Sales of Natural Gas, 56 FPC 509. At about the same time, in Order No. 749, the Commission also consolidated a number of the old vintages for discrete areas into a single nationwide category for all gas already under production before 1973. Just and Reasonable National Rates for Sales of Natural Gas, 54 FPC 3090 (1975), aff'd sub nom Tenneco Oil Co. v FERC, 571 F2d 834 (CA5), cert dism'd, 439 US 801, 58 L Ed 2d 94, 99 S Ct 43 (1978). Despite this consolidation, the Commission's price structure still contained 15 different categories of old gas, each with its own ceiling price. Despite all these efforts, moreover, severe shortages persisted in the interstate market because low ceiling prices for interstate gas sales fell considerably below prices the same gas could command in intrastate markets, which were as yet unregulated.

Congress responded to these ongoing problems by enacting the NGPA, the statute that controls this controversy. See Mid-Louisiana Gas Co., supra, at 330-331, 77 L Ed 2d 668, 103 S Ct 3024. The NGPA addressed the problem of continuing shortages in several ways. First, it gave the Commission the authority to regulate prices in the intrastate market as well as the interstate market. See Transcontinental Gas Pipe Line Corp. v State Oil and Gas Bd. of Miss. 474 US 409, 420-421, 88 L Ed 2d 732, 106 S Ct 709 (1986) (Transco). Second, to encourage production of new reserves, the NGPA established higher price ceilings for new

and hard-to-produce gas as well as a phased deregulation scheme for these types of gas. §§ 102, 103, 105, 107 and 108; 15 USC §§ 3312, 3313, 3315, 3317, 3318 [15 USCS §§ 3312, 3313, 3315, 3317, 3318]. Finally, to safeguard consumers, §§ 104 and 106 carried over the vintage price ceilings that happened to be in effect for old gas when the NGPA was enacted while mandating that these be adjusted for inflation. 15 USC §§ 3314 and 3316 [15 USCS §§ 3314 and 3316]. Congress, however, recognized that some of these vintage price ceilings "may be too *low* and authorize[d] the Commission to raise [them] whenever traditional NGA principles would dictate a higher price." Mid-Louisiana Gas, 463 US, at 333, 77 L Ed 2d 668, 103 S Ct 3024. In particular, §§ 104(b)(2) and 106(c) provided that the Commission "may, by rule or oder, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section." 15 USC §§ 3314(b)(2) and 3316(c) [15 USCS §§ 3314(b)(2) and 3316(c)]. The only conditions that Congress placed on the Commission were, first, that the new ceiling be higher than the ceiling set by the statute itself and, second, that it be "just and reasonable" within the meaning of the NGA. §§ 3314(b)(1), 3316(a).

The new incentives for production of new and difficult-to-produce gas transformed the gas shortages of the 1970's into gas surpluses during the 1980s. One result was serious market distortions. The higher new gas price ceilings prevented the unexpected oversupply from translating into lower consumer prices since the lower, vintage gas ceilings led to the premature abandonment of old gas reserves. App 32-36. Accordingly, the Secretary of Energy in 1985 formally recommended that the Commission issue a notice of proposed rulemaking to revise the old gas pricing system. 50 Fed Reg 48540 (1985). After conducting two days of public hearings and analyzing approximately 113 sets of comments, the Commission issued the two orders under dispute in this case: Order No. 451, promulgated in June 1986, 51 Fed Reg 22168 (1986); and Order No. 451-A, promulgated

in December 1986, which reaffirmed the approach of its predecessor while making certain modifications.[2] 51 Fed Reg 46762 (1986).

The Commission's orders have three principal components. First, the Commission collapsed the 15 existing vintage price categories of old gas into a single classification and established an alternative maximum price for a producer of gas in that category to charge, though only to a willing buyer. The new ceiling was set at $2.57 per million BTU's, a price equal to the highest of the ceilings then in effect for old gas (that having the most recent, post-1974, vintage) adjusted for inflation. 51 Fed Reg 22183-22185 (1986); see 18 CFR § 271.402(c)(3)(iii) (1986). When established the new ceiling exceeded the then-current market price for old gas. The Commission nonetheless concluded that this new price was "just and reasonable" because, among other reasons, it generally approximated the replacement cost of gas based upon the current cost of finding new gas fields, drilling new wells, and producing new gas. See Shell Oil Co. v FPC, 520 F 2d 1061 (CA5 1975) cert denied, 426 US 941, 49 L Ed 2d 394, 96 S Ct 2660, 2661, 2662 (1976) (holding that replacement cost formula appropriate for establishing "just and reasonable" rates under the NGA). In taking these steps, the Commission noted that the express and unambiguous terms of §§ 104(b)(2) and 106(c) gave it specific authorization to raise old gas prices so long as the resulting ceiling met the just and reasonable requirement. 51 Fed Reg, at 22179.

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[2] Order No. 451 shall refer to both orders where the distinction is not relevant.

The second principal feature of the orders establishes a "Good Faith Negotiation" (GFN) procedure that producers must follow before they can collect a higher price from current pipeline customers. 18 CFR § 270.201 (1986). The GFN process consists of several steps. Initially, a producer may request a pipeline to nominate a price at which the pipline would be willing to continue purchasing old gas under

any existing contract. § 270.201(b)(1). At the same time, however, this request is also deemed to be an offer by the producer to release the purchaser from *any* contract between the parties that covers the sale of old gas. § 270.201(b)(4). In response, the purchaser can both nominate its own price for continuing to purchase old gas under the contracts specified by the purchaser and further request that the producer nominate a price at which the producer would be willing to continue selling any gas, old or new, covered under any contracts specified by the purchaser that cover at least some old gas. If the parties cannot come to terms, the producer can either continue sales at the old price under existing contracts or abandon its existing obligations so long as it has executed a new contract with another purchaser and given its old customer 30-days' notice. §§ 157.301, 270.201(c)(1), (e)(4). The Commission's chief rationale for the GFN process was a fear that automatic collection of the new price by producers would lead to market disruption given the existence of numerous gas contracts containing indefinite price-escalation clauses tied to whatever ceiling the agency established. 51 Fed Reg, at 22204. The Commission further concluded that NGA § 7(b), which establishes a "due hearing" requirement before abandonments could take place, did not prevent it from promulgating an across-the-board rule rather than engage in case-by-case adjudication. 15 USC § 717f(b) [15 USCS § 717f(b)].

Finally, the Commission rejected suggestions that it undertake completely to resolve the issue of take-or-pay provisions in certain natural gas contracts in the same proceeding in which it addressed old gas pricing.[3] The Commission explained that it was already addressing the take-or-pay problem in its Order No. 436 proceedings. It further pointed out that the GFN procedure, in allowing the purchaser to propose new higher prices for old gas in return for renegotiation of take-or-pay obligations, would help resolve many take-or-pay

disputes. The Commission also reasoned that the expansion of old gas reserves resulting from its orders would reduce new gas prices and thus reduce the pipelines' overall take-or-pay exposure. 51 Fed Reg, at 22174-22175, 22183, 22196-22197, 46783-46784.

A divided panel of the Court of Appeals for the Fifth Circuit vacated the orders on the ground that the Commission had exceeded its statutory authority. The court first concluded that Congress did not intend to give the Commission the authority to set a single ceiling price for old gas under §§ 104(b)(2) and 106(c). The court also dismissed the ceiling price itself as unreasonable since it was higher than the spot market price when the orders were issued and so amounted to "de facto deregulation." 885 F2d, at 218-222. Second, the court rejected the GFN procedure on the basis that the Commission lacked the authority to provide for across the board, preauthorized abandonment under § 7(b). Id., at 221-222. Third, the court chided the Commission for failing to seize the opportunity to resolve the take-or-pay issue, although it did acknowledge that the Commission was addressing that matter on remand from the District of Columbia Circuit's decision in Associated Gas Distributors v FERC, 263 US App DC 1, 824 F2d 981 (1987), cert denied, 485 US 1006, 99 L Ed 2d 698, 108 S Ct 1468 (1988). The dissent disagreed with all three conclusions, observing that the majority should have deferred to the Commission as the agency Congress delegated to regulate natural gas. 885 F2d, at 226-235 (Brown, J., dissenting). We granted certiorari, 496 US 904, 110 L Ed 2d 266, 110 S Ct 2585 (1990), and now reverse and sustain the Commission's orders.

II

Section 104(a) provides that the maximum price for old gas should be computed as provided in § 104(b).[4]

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[3] A take-or-pay clause requires a purchasing pipeline to take a specified volume of gas from a producer or, if it is unable to do so, to pay for the specified volume. See Transco, 474 US 409, 412, 88 L Ed 2d 732, 106 S Ct 709 (1986).

[4] Section 104 in its entirety reads:

"Ceiling price for sales of natural gas dedicated to interstate commerce.

"(a) Application.—In the case of natural gas committed or dedicated to interstate commerce on [November 8, 1978,] and for which a just and reasonable rate under the Natural Gas Act [15 USC § 717 et seq. [15 USCS §§ 717 et seq.]] was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

"(b) Maximum lawful price.—

"(1) General rule.—The maximum lawful price under this section for any month shall be the higher of—

"(A)(i) the just and reasonable rate, per million Btu's, established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

"(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

"(B) any just and reasonable rate which was established by the Commission after April 27, 1977, and before [November 9, 1978,] and which is applicable to such natural gas.

"(2) Ceiling prices may be increased if just and reasonable.—The Commission may, by

The general [498 US 222] rule under § 104(b)(1) is that each category of old gas would be priced as it was prior to the enactment of the NGPA, but increased over time in accordance with an inflation formula. This was the regime that obtained under the NGPA until the issuance of the orders at issue here. Section 104(b)(2), however, plainly gives the Commission authority to change this regulatory scheme applicable to old gas:

> "The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale [498 US 223] of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—
>
> "(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and
>
> "(B) just and reasonable within the meaning of the Natural Gas Act [15 USC 717 et seq. [15 USCS §§ 717 et seq.]]." 15 USC §§ 3314(b)(2) and 3316(c) [15 USCS §§ 3314(b)(2) and 3316(c)].

[1b, 4] Nothing in these provisions prevents the Commission from either increasing the ceiling price for multiple old gas vintages or from setting the ceiling price applicable to each vintage at the same level. To the contrary, the statute states that the Commission may increase the ceiling price for "*any* natural gas *(or category thereof, as determined by the Commission).*" (Emphasis added.) Likewise, § 104(b)(2) allows the Commission to "prescribe *a* ceiling price" applicable to any natural gas category. Insofar as "any" encompasses "all," this language enables the Commission to set a single ceiling price for every category of old gas. As we have stated in similar contexts, "[i]f the statute is clear and unambiguous, 'that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" Sullivan v Stroop, 496 US 478, 482, 110 L Ed 2d 438, 110 S Ct 2499 (1990) (quoting K mart Corp. v Cartier, Inc. 486 US 281, 291, 100 L Ed 2d 313, 108 S Ct 1811 (1988)).

[1c] Respondents counter that the structure of the NGPA points to the opposite conclusion. Specifically, they contend that Congress could not have intended to allow the Commission to collapse all old gas vintages under a single price where the NGPA created detailed incentives for new and difficult-to-produce gas on one hand, yet carefully preserved the old gas vintaging scheme on the other. Brief for Respondents 33-37. We disagree. The statute's bifurcated approach implies no more than that Congress found the need to encourage new gas production suf-

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rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

"(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

"(B) just and reasonable within the meaning of the Natural Gas Act [15 USC 717 et seq. [15 USCS §§ 717 et seq.]]."

Section 106(c), deals in almost identical language with the ceiling prices for sales under "rollover" contacts, which the NGPA defines as contracts entered into on or after November 8, 1978, for the first sale of natural gas that was previously subject to a contract that expired at the end of a fixed term specified in the contract itself. 15 USC § 3301(12) [15 USCS § 3301(12)]. A reference to § 104(b)(2) is here used to refer to both provisions.

ficiently pressing to deal with the **[498 US 224]** matter directly, but was content to leave old gas pricing within the discretion of the Commission to alter as conditions warranted. The plain meaning of § 104(b)(2) confirms this view.

Further, the Commission's decision to set a single ceiling fully accords with the two restrictions that the NGPA does establish. With respect to the first, the requirement that a ceiling price be "higher than" the old vintage ceilings carried over from the NGA does nothing to prevent the Commission from consolidating existing categories and setting one price equivalent to the highest previous ceiling. 15 USC §§ 3314(b)(2)(A) and 3316(c)(1) [15 USCS §§ 3314(b)(2)(A) and 3316(c)(1)]. With respect to the second, collapsing the old vintages also comports with the mandate that price ceilings be "just and reasonable within the meaning of the Natural Gas Act." 15 USC §§ 3314(b)(2)(B) and 3316(c)(2) [15 USCS §§ 3314(b)(2)(B) and 3316(c)(2)].

[1d] Far from binding the Commission, the "just and reasonable" requirement accords it broad ratemaking authority that its decision to set a single ceiling does not exceed. The Court has repeatedly held that the just and reasonable standard does not compel the Commission to use any single pricing formula in general or vintaging in particular. FPC v Hope Natural Gas Co. 320 US 591, 602, 88 L Ed 333, 64 S Ct 281 (1944); FPC v Natural Gas Pipeline Co. 315 US 575, 586, 86 L Ed 1037, 62 S Ct 736 (1942); Permian Basin, 390 US, at 776-777, 20 L Ed 2d 312, 88 S Ct 1344; FPC v Texaco Inc. 417 US 380, 386-389, 41 L Ed 2d 141, 94 S Ct 2315 (1974); Mobil Oil Corp. v FPC, 417 US 283, 308, 41 L Ed 2d 72, 94 S Ct 2328 (1974). Courts of Appeals have also consistently affirmed the Commission's use of a replacement-cost-based method under the NGA. E.g., Shell Oil Co. v FPC, 520 F2d 1061, 1082-1083 (CA5 1975), cert denied, 426 US 941, 49 L Ed 2d 394, 96 S Ct 2660, 2661, 2662 (1976); American Public Gas Assn v FPC, 567 F2d 1016, 1059 (CADC 1977), cert denied, 435 US 907, 55 L Ed 2d 499, 98 S Ct 1456, 1457 (1978). By incorporating the "just and reasonable" standard into the NGPA, Congress clearly meant to preserve the pricing flexibility the Commission had historically exercised under the **[498 US 225]** NGA. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v Curran, 456 US 353, 378-382, 72 L Ed 2d 182, 102 S Ct 1825 (1982). In employing a replacement cost formula, the Commission did no more than what it had previously done under the NGA: collapse vintage categories together because the replacement cost for natural gas is the same regardless of when it was placed in production. See Order No. 749, Just and Reasonable National Rates for Sales of Natural Gas, 54 FPC 3090 (1975).[5]

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[5] **[1e]** Even had we concluded that §§ 104(b)(2) and 106(c) failed to speak unambiguously to the ceiling price question, we would nonetheless be compelled to defer to the Commission's interpretation. It follows from our foregoing discussion that the agency's view cannot be deemed arbitrary, capricious, or manifestly contrary to the NGPA. See Chevron USA, Inc. v Natural Resources Defense Council, Inc. 467 US 837, 843-844, 81 L Ed 2d 694, 104 S Ct 2778 (1984); K mart Corp. v Cartier, Inc., 486 US 281, 292, 100 L Ed 2d 313, 108 S Ct 1811 (1988).

[5] Respondents contend that even if the statute allows the Commission to set a single old gas ceiling, the particular ceiling it has set is unjustly and impermissibly high. They first argue that the Commission conceded that actual collection of the new price would not be just and therefore established the GFN procedures as a requisite safeguard. The Commission correctly denies having made any such concession. In its orders, in its briefs, and at oral argument, the agency has been at pains to point out that its ceiling price, which was no higher than the highest of the ceilings then applicable to old gas, falls squarely within the "zone of reasonableness" mandated by the NGA. See Permian Basin, supra, at 767, 20 L Ed 2d 312, 88 S Ct 1344. What the agency has acknowledged is that automatic collection of prices up to the ceiling under the escalator clauses common to industry contracts would produce "inappropriate" market distortion, especially since the market price remains below the ceiling. Reply Brief for Petitioner in No. 89-1453, p 12. In consequence the Commission instituted the GFN process to mitigate too abrupt a transition from one pricing regime to the next. Respondents have not sought to challenge (and we do not today consider) the Commission's authority

[498 US 226]

to require this process, but they assert that the requiring of it amounts to an acknowledgment by the Commission that the new ceiling price is in fact unreasonable. We disagree. There is nothing incompatible between the belief that a price is reasonable and the belief that it ought not to be imposed without prior negotiations. We decline to disallow an otherwise lawful rate because additional safeguards accompany it.

[6] We likewise reject respondents' more fundamental objection that no order "deregulating" the price of old gas can be deemed just and reasonable. The agency's orders do not deregulate in any legally relevant sense. The Commission adopted an approved pricing formula, set a maximum price, and expressly rejected proposals that it truly deregulate by eliminating any ceiling for old gas whatsoever. App 170-171. Nor can we conclude that deregulation results simply because a given ceiling price may be above the market price. United Gas Pipe Line Co. v Mobile Gas Serv. Corp. 350 US 332, 343, 100 L Ed 373, 76 S Ct 373 (1956); FPC v Sierra Pacific Power Co. 350 US 348, 353, 100 L Ed 388, 76 S Ct 368 (1956); FPC v Texaco Inc., 417 US 380, 397, 41 L Ed 2d 141, 94 S Ct 2315 (1974).

III

[2b] We further hold that Order No. 451's abandonment procedures fully comport with the requirements set forth in § 7(b) of the NGA. 15 USC § 717f(b) [15 USCS § 717f(b)]. In particular, we reject the suggestion that this provision mandates individualized proceedings involving interested parties before a specific abandonment can take place.

Section 7(b), which Congress retained when enacting the NGPA, states:

> "No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commis-

> sion that the available supply [498 US 227] of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment." 15 USC § 717f(b) [15 USCS § 717f(b)].

As applied to this case § 7(b) prohibits a producer from abandoning its contractual service obligations to the purchaser unless the Commission has, first, granted its "permission and approval" of the abandonment; second, made a "finding" that "present or future public convenience or necessity permit such abandonment"; and, third, held a "hearing" that is "due." The Commission has taken each of these steps.

First, Order No. 451 permits and approves the abandonment at issue. That approval is not specific to any single abandonment but is instead general, prospective, and conditional. These conditions include: failure by the purchaser and producer to agree to a revised price under the GFN procedures; execution of a new contract between the producer and a new purchaser; and 30-days' notice to the previous purchaser of contract termination. 18 CFR § 270.201(c)(1) (1986). Neither respondents nor the Court of Appeals holding directly questions the Commission's orders for failing to satisfy this initial requirement. As we have previously held, nothing in § 7(b) prevents the Commission from giving advance approval of abandonment. FPC v Moss, 424 US 494, 499-502, 47 L Ed 2d 186, 96 S Ct 1003 (1976). See Permian Basin, 390 US, at 776, 20 L Ed 2d 312, 88 S Ct 1344.

[2c, 7, 8] Second, the Commission also made the necessary findings that "present or future public interest or necessity" allowed the conditional abandonment that it prescribed. 51 Fed Reg, at 46785-46787. Reviewing "all relevant factors involved in determining the overall public interest," the Commission found that preauthorized abandonment under the GFN regime would generally protect purchasers by allowing them to buy at market rates elsewhere if contracting producers insisted on the new ceiling price; safeguard producers by allowing them to abandon service if the contracting purchaser fails to come to terms; and serve the market by releasing previously [498 US 228] unused reserves of old gas. See Felmont Oil Corp. and Essex Offshore, Inc. 33 FERC ¶ 61,333, p 61,657 (1985), rev'd on other grounds sub nom Consolidated Edison Co. of NY v FERC, 262 US App DC 222, 823 F2d 630 (1987). At bottom these findings demonstrate the agency's determination that the GFN conditions make certain matters common to all abandonments. Contrary to respondents' theory, § 7(b) does not compel the agency to make "specific findings" with regard to every abandonment when the issues involved are general. As we held in the context of disability proceedings under the Social Security Act, "general factual issue[s] may be resolved as fairly through rulemaking" as by considering specific evidence when the questions under consideration are "not unique" to the particular case. Heckler v Campbell, 461 US 458, 468, 76 L Ed 2d 66, 103 S Ct 1952 (1983).

[2d, 9] Finally, it follows from the foregoing that the Commission discharged its § 7(b) duty to hold a "due hearing." Before promulgating Order No. 451, the agency held both a notice and comment hearing and an oral hearing. As it correctly concluded, § 7(b) required no more. Time and again, "[t]he Court has recognized that even where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration." Heckler v Campbell, supra, at 467, 76 L Ed 2d 66, 103 S Ct 1952; Permian Basin, supra, at 774-777, 20 L Ed 2d 312, 88 S Ct 1344; FPC v Texaco Inc. 377 US 33, 41-44, 12 L Ed 2d 112, 84 S Ct 1105 (1964); United States v Storer Broadcasting Co. 351 US 192, 205, 100 L Ed 1081, 76 S Ct 763 (1956). The Commission's approval conditions establish, and its findings confirm, that the abandonment at issue here is precisely the type of issue in which "[a] contrary holding would require the agency continually to relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding." Heckler v Campbell, supra, at 467, 76 L Ed 2d 66, 103 S Ct 1952. See Panhandle Eastern Pipe Line Co. v FERC, 285 US App DC 115, 907 F2d 185, 188 (1990); Kansas Power & Light Co. v

FERC, 271 US App DC 252, 256-259, 851 F2d 1479, 1483-1486 (1988); Associated Gas Distributors v FERC, 263 US App DC 1, 35, n 17, 824 F2d 981, 1015, n 17 (1987), cert denied, 485 US 1006, 99 L Ed 2d 698, 108 S Ct 1468 (1988).

Neither the Court of Appeals nor respondents have uncovered a convincing rationale for holding otherwise. Relying on United Gas Pipe Line Co. v McCombs, 442 US 529, 61 L Ed 2d 54, 99 S Ct 2461 (1979), the panel majority held that Order No. 451's prospective approval of abandonment was impermissible given the "practical" control the GFN process afforded producers. 885 F2d, at 221-223. McCombs, however, is inapposite since that case dealt with a producer who attempted to abandon with no Commission approval, finding, or hearing whatsoever. Nor can respondents object that the Commission made no provision for individual determinations under its abandonment procedures where appropriate. Under Order No. 451, a purchaser who objects to a given abandonment on the grounds that the conditions the agency has set forth have not been met may file a complaint with the Commission. See 18 CFR § 385.206 (1986).

IV

[3b] We turn, finally, to the problem of "take-or-pay" contracts. A take-or-pay contract obligates a pipeline to purchase a specified volume of gas at a specified price and, if it is unable to do so, to pay for that volume. A plausible response to the gas shortages of the 1970's, this device has created significant dislocations in light of the oversupply of gas that has occurred since. Today many purchasers face disastrous take-or-pay liability without sufficient outlets to recoup their losses. The Court of Appeals cited this problem as a further reason for invalidating Order No. 451. Specifically, the court chastised the Commission for its "regrettable and unwarranted" failure to address the take-or-pay problem in the rulemaking under consideration. 885 F2d, at 224.

Exactly what the court held, however, is another matter. The dissent viewed the majority's discussion as affirmatively

ordering the Commission "once and for all to *solve*" the entire take-or-pay issue. 885 F2d, at 234 (Brown, J., dissenting). Respondents more narrowly characterize the holding as that the Commission should have addressed the take-or-pay problem at least to the extent that Order No. 451 exacerbated it. Brief for Respondents 67-70. We have no need to choose between these interpretations because the Court of Appeals erred under either view.

[3c, 10] The court clearly overshot the mark if it ordered the Commission to resolve the take-or-pay problem in this proceeding. An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures, Vermont Yankee Nuclear Power Corp. v National Resources Defence Council, Inc. 435 US 519, 55 L Ed 2d 460, 98 S Ct 1197 (1978), and priorities, Heckler v Chaney, 470 US 821, 831-832, 84 L Ed 2d 714, 105 S Ct 1649 (1985). We have expressly approved an earlier Commission decision to treat the take-or-pay issue separately where a different proceeding would generate more appropriate information and where the agency was addressing the question. FPC v Sunray DX Oil Co. 391 US 9, 49-51, 20 L Ed 2d 388, 88 S Ct 1526 (1968). The record in this case shows that approximately two-thirds of existing take-or-pay contracts do not involve old gas. We are satisfied that the agency could compile relevant data more effectively in a separate proceeding. We are likewise satisfied that "the Commission itself has taken steps to alleviate take-or-pay problems." Id., at 50, 20 L Ed 2d 388, 88 S Ct 1526. In promulgating Order No. 451, the agency explained that it had chosen not to deal with the take-or-pay matter directly primarily because it was addressing the matter on remand from the DC Circuit. Associated Gas Distributors v FERC, supra.[6]

[3d] The court likewise erred if it meant that the Commission should have addressed the take-or-pay problem insofar as Order No. 451 "exacerbated" it. This rationale does not provide a basis for invalidating the Commission's orders. As noted, an agency need not solve every problem before it in the same proceeding. This applies even where the initial solution to one problem has adverse consequences for another area that the agency was addressing. See Vermont Yankee, supra, at 543-544, 55 L Ed 2d 460, 98 S Ct 1197 (agencies are free to engage in multiple rulemaking "[a]bsent constitutional constraints or extremely compelling circumstances"). Moreover, the agency articulated rational grounds for concluding that Order No. 451 would do more to ameliorate the take-or-pay problem than worsen it. 51 Fed Reg, at 22196, 46783-46784. The agency reasoned that the GFN procedures would encourage the renegotiation of take-or-pay provisions in contracts involving the sale of old gas or old gas and new gas together. 51 Fed

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[6] The Court of Appeals for the D. C. Circuit has since invalidated the Commission's principal attempt at solving the problem. Associated Gas Distributors v FERC, 283 US App DC 265, 899 F2d 1250 (1990). See also American Gas Assn. v FERC, 286 US App DC 142, 912 F2d 1496 (1990) (approving other aspects of the Commission's take-or-pay proceedings), cert pending sub nom Wilcox v FERC, No. 90-806. Nothing in our holding today precludes interested parties from petitioning the Commission for further rulemaking should it become apparent that the agency is no longer addressing the take-or-pay problem. See Panhandle Eastern Pipe Line Co. v FERC, 281 US App DC 318, 890 F2d 435 (1989).

Reg, at 22196-22197. The agency further noted that the release of old gas would reduce the market price for new gas and thus reduce the pipelines' aggregate liability. We are neither inclined nor prepared to second-guess the agency's reasoned determination in this complex area. See Motor Vehicle Mfrs. Assn. of United States, Inc. v State Farm Mutual Automobile Ins. Co. 463 US 29, 43, 77 L Ed 2d 443, 103 S Ct 2856 (1983).

V

[1f, 2e, 3e] We disagree with the Court of Appeals that the Commission lacked the authority to set a single ceiling price for old gas; possessed no power to authorize conditional preauthorized abandonment of producers' obligations to provide old gas; or had a duty to address the take-or-pay problem more fully in this proceeding. Accordingly, we reverse the judgment

of the Court of Appeals and sustain Orders No. 451 and 451-A in their entirety.

So ordered.

Justice **Kennedy** took no part in the decision in this case.

MEMORANDUM CASES

No. 89-1940. Harold Erickson, et al., Petitioners v Maine Central Railroad Co., et al.

498 US 1018, 112 L Ed 2d 656, 111 S Ct 662.

December 26, 1990. The petition for a writ of certiorari to the United States Court of Appeals for the First Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

No. A-498. Go-Video, Inc., Applicant v Matsushita Electric Industrial Co., Ltd., et al.

498 US 1018, 112 L Ed 2d 656, 111 S Ct 662.

December 28, 1990. The application for an injunction pending appeal, addressed to Justice Kennedy and referred to the Court, is denied.

No. 90-6157 (A-453). Gary Lee Davis, Petitioner v Colorado

498 US 1018, 112 L Ed 2d 656, 111 S Ct 662.

January 4, 1991. The application for stay of execution of sentence of death, presented to Justice White, and by him referred to the Court, is denied. The petition for a writ of certiorari to the Supreme Court of Colorado is denied.

Same case below, 794 P2d 159.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution and the petition for a writ of certiorari and would vacate the death sentence in this case.

No. 89-2008. Bill Clinton, Governor of Arkansas, et al., Appellants v M. C. Jeffers, et al.

498 US 1019, 112 L Ed 2d 656, 111 S Ct 662.

January 7, 1991. Appeal from the United States District Court for the Eastern District of Arkansas. The judgment is affirmed.

Same case below, 730 F Supp 196, 756 F Supp 1195.

No. 89-1010. Lih Y. Young, Petitioner v National Center for Health Services Research

498 US 1019, 112 L Ed 2d 656, 111 S Ct 662.

January 7, 1991. On petition for writ of certiorari to the United States Court of Appeals for the

Fourth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of Irwin v Department of Veterans Affairs, 498 US 89, 112 L Ed 2d 435, 111 S Ct 453 (1990).

Same case below, 887 F2d 1082.

No. 89-1060. Darrell Ledsome, Petitioner v U-Brand Corporation, Foundry Division

498 US 1019, 112 L Ed 2d 657, 111 S Ct 663.

January 7, 1991. On petition for writ of certiorari to the Court of Appeals of Ohio, Ashland County. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Appeals of Ohio, Ashland County, for further consideration in light of Groves v Ring Screw Works, Ferndale Fastener Division, 498 US 168, 112 L Ed 2d 508, 111 S Ct 498 (1990).

No. 90-524. Connecticut, Petitioner v Martin Geisler

498 US 1019, 112 L Ed 2d 657, 111 S Ct 663.

January 7, 1991. On petition for writ of certiorari to the Appellate Court of Connecticut. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Appellate Court of Connecticut for further consideration in light of New York v Harris, 495 US 14, 109 L Ed 2d 13, 110 S Ct 1640 (1990).

Same case below, 22 Conn App 142, 576 A2d 1283.

No. ——. Julius L. Chambers, Petitioner v United States Department of the Army, et al.

498 US 1019, 112 L Ed 2d 657, 111 S Ct 663.

January 7, 1991. The motion of petitioner to dispense with printing a portion of the appendix to the petition for a writ of certiorari is granted.

No. ——. Earl Joseph Hall, Petitioner v Pennsylvania

498 US 1019, 112 L Ed 2d 657, 111 S Ct 663.

January 7, 1991. The motion for leave to proceed in forma pauperis without an affidavit of indigency executed by the petitioner is granted.

No. ——. Ikechuku O. Agomo, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1019, 112 L Ed 2d 657, 111 S Ct 663.

January 7, 1991. The motion to

direct the Clerk to file a petition for a writ of certiorari out of time is denied.

No. A-433. Rainsford Winslow, et ux., Applicants v Morgan County and Williams Group

498 US 1019, 112 L Ed 2d 658, 111 S Ct 663.

January 7, 1991. The application for stay and injunctive relief, addressed to Justice Blackmun and referred to the Court, is denied.

No. A-457. John W. Brown, Jr., Applicant v Wrentham District Court

498 US 1019, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. The application for stay, addressed to Justice Marshall and referred to the Court, is denied.

No. A-459. Koehring Finance Corporation, et al., Applicants v Steven K. Hilgedick, et al.

498 US 1020, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. The motion to vacate the stay heretofore granted by Justice O'Connor is denied. Justice Blackmun dissents in part and, as the parties have agreed, would grant the application to vacate insofar as compensatory damages are concerned.

No. A-480. Richard William Donovan, on Behalf of Christopher Richard Donovan, Applicant v Joan Rodenberg, et al.

498 US 1020, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. The application for stay of orders, addressed to Justice Souter and referred to the Court, is denied.

No. A-504. National Treasury Employees Union, et al., Applicants v United States, et al.

498 US 1020, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. The application for an injunction pending appeal, presented to The Chief Justice, and by him referred to the Court, is denied.

No. D-917. In the Matter of Disbarment of Barry J. Henderson

498 US 1020, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. Disbarment order entered.

No. D-921. In the Matter of Disbarment of David Harrison Yinger, Jr.

498 US 1020, 112 L Ed 2d 658, 111 S Ct 664.

January 7, 1991. Disbarment order entered.

No. D-934. In the Matter of Disbarment of R. Michael Standard

498 US 1020, 112 L Ed 2d 659, 111 S Ct 664.

January 7, 1991. R. Michael Standard, of Los Angeles, California, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on September 21, 1990, is hereby discharged.

No. D-940. In the Matter of Disbarment of Robert Allen Moore

498 US 1020, 112 L Ed 2d 659, 111 S Ct 665.

January 7, 1991. The motion to defer further proceedings is granted.

No. D-944. In the Matter of Disbarment of Alan H. Russell

498 US 1020, 112 L Ed 2d 659, 111 S Ct 665.

January 7, 1991. Disbarment order entered.

No. D-958. In the Matter of Disbarment of Walton Bishop Noble

498 US 1020, 112 L Ed 2d 659, 111 S Ct 665.

January 7, 1991. It is ordered that Walton Bishop Noble, of Belle Chasse, Louisiana, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-959. In the Matter of Disbarment of Harry Hilliard Braxton

498 US 1020, 112 L Ed 2d 659, 111 S Ct 665.

January 7, 1991. It is ordered that Harry Hilliard Braxton, of Baltimore, Maryland, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 109, Original. State of Oklahoma and State of Texas, Plaintiffs v State of New Mexico

498 US 1021, 112 L Ed 2d 659, 111 S Ct 665.

January 7, 1991. The motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is awarded a total of $71,790.81 for the period February 1 through November 8, 1990, one-third to be paid by each party.

No. 89-1027. Norfolk and Western Railway Company, et al., Petitioners v American Train Dispatchers' Association, et al.

No. 89-1028. CSX Transportation, Inc., Petitioner v Brotherhood of Railway Carmen, et al.

498 US 1021, 112 L Ed 2d 660, 111 S Ct 666.

January 7, 1991. The motion of respondents American Train Dispatchers' Association, et al. for leave to file a supplemental brief after argument is granted.

No. 89-1137. Lynn Rannels, Petitioner v Meridian Bancorp, Inc.

498 US 1021, 112 L Ed 2d 660, 111 S Ct 666.

January 7, 1991. The motion of petitioner to sanction respondent's counsel is denied.

No. 89-1717. Florida, Petitioner v Terrance Bostick

498 US 1021, 112 L Ed 2d 660, 111 S Ct 666.

January 7, 1991. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 89-1817. County of Riverside and Cois Byrd, Sheriff of Riverside County, Petitioners v Donald Lee McLaughlin, et al.

498 US 1021, 112 L Ed 2d 660, 111 S Ct 666.

January 7, 1991. The motion of Grover C. Trask, II, District Attorney of Riverside County, for leave to participate in oral argument as amicus curiae, for divided argument, and for additional time is denied.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 1021, 112 L Ed 2d 660, 111 S Ct 667.

January 7, 1991. The motion of Barbara Babcock, et al. for leave to file a brief as amici curiae is granted. The motion of National Legal Aid and Defender Association for leave to file a brief as amicus curiae is granted. The motion of National Association of Criminal Defense Lawyers, et al. for leave to file a brief as amici curiae is granted. The motion of Murder Victims' Families for Reconciliation for leave to file a brief as amicus curiae is granted.

No. 90-26. Michael Barnes, Prosecuting Attorney of St. Joseph County, Indiana, et al., Petitioners v Glen Theatre, Inc., et al.

498 US 1021, 112 L Ed 2d 660, 111 S Ct 667.

January 7, 1991. The motion of

James J. Clancy for leave to file a brief as amicus curiae is granted.

No. 90-97. American Hospital Association, Petitioner v National Labor Relations Board, et al.

498 US 1022, 112 L Ed 2d 661, 111 S Ct 667.

January 7, 1991. The motion of the Solicitor General for divided argument is denied.

No. 90-350. Jeanne Farrey, fka Jeanne Sanderfoot, Petitioner v Gerald J. Sanderfoot

498 US 1022, 112 L Ed 2d 661, 111 S Ct 667.

January 7, 1991. The motion of petitioner to dispense with printing the joint appendix is granted.

No. 90-408. County of Yakima, et al., Petitioners v Confederated Tribes and Bands of the Yakima Indian Nation

No. 90-577. Confederated Tribes and Bands of the Yakima Indian Nation, Petitioner v County of Yakima and Dale A. Gray, Yakima County Treasurer

498 US 1022, 112 L Ed 2d 661, 111 S Ct 667, 111 S Ct 668.

January 7, 1991. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 90-711. Lawrence C. Presley, Appellant v Etowah County Commission, et al.

No. 90-712. Ed Peter Mack and Nathaniel Gosha, III, Appellants v Russell County Commission, et al.

498 US 1022, 112 L Ed 2d 661, 111 S Ct 668.

January 7, 1991. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 90-749. South Dakota, et al., Petitioners v Rosebud Sioux Tribe, et al.

498 US 1022, 112 L Ed 2d 661, 111 S Ct 668.

January 7, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-871. Connecticut, et al., Petitioners v Mashantucket Pequot Tribe

498 US 1022, 112 L Ed 2d 661, 111 S Ct 668.

January 7, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-673. Francis Edwin Bass, Jr., et al., Petitioners v South Carolina, et al.

498 US 1022, 112 L Ed 2d 662, 111 S Ct 668.

January 7, 1991. The motion of Wisconsin State Federation of Chapters of the National Association of Retired Federal Employees for leave to file a brief as amicus curiae is granted.

No. 90-5193. Dawud Majid Mu-'Min, Petitioner v Virginia

498 US 1022, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. The motion of National Jury Project for leave to file a brief as amicus curiae is granted.

No. 89-1836. Dominic P. Gentile, Petitioner v State Bar of Nevada

498 US 1023, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Nevada granted.

Same case below, 106 Nev 60, 787 P2d 386.

No. 89-1895. Astoria Federal Savings and Loan Association, Petitioner v Angelo J. Solimino

498 US 1023, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 901 F2d 1148.

No. 90-605. Department of Transportation, et al., Petitioners v Air Transport Association of America, et al.

498 US 1023, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit granted.

Same case below, 283 App DC 385, 900 F2d 369.

No. 90-659. Keith R. Gollust, et al., Petitioners v Ira L. Mendell, et al.

498 US 1023, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 909 F2d 724.

No. 90-5538. Zakhar Melkonyan, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 1023, 112 L Ed 2d 662, 111 S Ct 669.

January 7, 1991. Motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 895 F2d 556.

No. 89-6585. Eleanor Reed, Petitioner v Anthony M. Frank, Postmaster General

498 US 1023, 112 L Ed 2d 663, 111 S Ct 670.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 888 F2d 1394.

No. 90-25. John J. Dillon, III, Commissioner of the Department of Insurance of Indiana, et al., Petitioners v Ted Allen Combs, et al.

498 US 1023, 112 L Ed 2d 663, 111 S Ct 670.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 895 F2d 1175.

No. 90-102. Liberty County, Florida, et al., Petitioners v Gregory Solomon, et al.

498 US 1023, 112 L Ed 2d 663, 111 S Ct 670.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 899 F2d 1012.

No. 90-281. Associated Grocers, Inc., Petitioner v Washington

No. 90-465. Washington, Petitioner v Associated Grocers, Inc.

498 US 1023, 112 L Ed 2d 663, 111 S Ct 670.

January 7, 1991. Petitions for writs of certiorari to the Supreme Court of Washington denied.

Same cases below, 114 Wash 2d 182, 787 P2d 22.

No. 90-388. Dow Chemical Company, et al., Petitioners v Domingo Castro Alfaro, et al.

498 US 1024, 112 L Ed 2d 663, 111 S Ct 671.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Texas denied.

Same case below, 786 SW2d 674.

No. 90-420. Jack Manuel Alvarez, Jr., Petitioner v United States

498 US 1024, 112 L Ed 2d 663, 111 S Ct 671.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 833.

No. 90-434. Sonicraft, Inc., Petitioner v National Labor Relations Board

498 US 1024, 112 L Ed 2d 664, 111 S Ct 671.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 146.

No. 90-447. Salsbury Industries, Petitioner v United States

498 US 1024, 112 L Ed 2d 664, 111 S Ct 671.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 905 F2d 1518.

No. 90-449. James Hamilton, Petitioner v United States

498 US 1024, 112 L Ed 2d 664, 111 S Ct 671.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-472. National Fabricators, Inc., Petitioner v National Labor Relations Board

498 US 1024, 112 L Ed 2d 664, 111 S Ct 671.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 903 F2d 396.

No. 90-478. Heberto Lorenzo, Petitioner v United States

498 US 1024, 112 L Ed 2d 664, 111 S Ct 672.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 828.

No. 90-488. Michael Arvin, Petitioner v United States

498 US 1024, 112 L Ed 2d 664, 111 S Ct 672.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 1385.

No. 90-499. Acmat Corporation, Petitioner v School District of Philadelphia

No. 90-680. School District of Philadelphia, Petitioner v Acmat Corporation

498 US 1024, 112 L Ed 2d 665, 111 S Ct 672.

January 7, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 693, 904 F2d 696.

No. 90-505. California Public Utilities Commission, Petitioner v Federal Energy Regulatory Commission, et al.

498 US 1024, 112 L Ed 2d 665, 111 S Ct 672.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 903 F2d 585.

No. 90-506. Alice Orsini, on Behalf of Megan R. Orsini, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 1024, 112 L Ed 2d 665, 111 S Ct 672.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 1393.

No. 90-520. Town of Rye, New York, et al., Petitioners v Samuel K. Skinner, Secretary of Transportation, et al.

498 US 1024, 112 L Ed 2d 665, 111 S Ct 673.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 23.

No. 90-537. Michael H. Gulley, et al., Petitioners v Sunbelt Savings, FSB, et al.

498 US 1025, 112 L Ed 2d 665, 111 S Ct 673.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 348.

No. 90-593. Allen C. Kaiser, Petitioner v United States Postal Service, et al.

498 US 1025, 112 L Ed 2d 665, 111 S Ct 673.

January 7, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 47.

No. 90-610. Edward Alois Walther, Petitioner v United States

498 US 1025, 112 L Ed 2d 666, 111 S Ct 673.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 741.

No. 90-611. Regis Ann Gould, Petitioner v Department of Health and Human Services, et al.

498 US 1025, 112 L Ed 2d 666, 111 S Ct 673.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 738.

No. 90-617. James M. Dombroski, Petitioner v F2 America, Inc., and F2 International, Inc.

498 US 1025, 112 L Ed 2d 666, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 746.

No. 90-633. Eugene Raffield, Petitioner v Florida

498 US 1025, 112 L Ed 2d 666, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 565 So 2d 704.

No. 90-641. Reginald G. Addison, et al., Petitioners v Federal Trade Commission

498 US 1025, 112 L Ed 2d 666, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 146, 897 F2d 1168.

No. 90-649. Schery Ann Draper, Petitioner v Iowa

498 US 1025, 112 L Ed 2d 666, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Iowa denied.

Same case below, 457 NW2d 600.

No. 90-653. Judybill Osceola, Petitioner v Florida Department of Revenue

498 US 1025, 112 L Ed 2d 667, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 893 F2d 1231.

No. 90-654. Timothy Sheehan, Petitioner v California

498 US 1025, 112 L Ed 2d 667, 111 S Ct 674.

January 7, 1991. Petition for writ of certiorari to the Appellate Department, Superior Court of California, Alameda County, denied.

No. 90-661. Michael Wood, Petitioner v Alameda County Superior Court (City of Hayward, California, Real Party in Interest)

498 US 1025, 112 L Ed 2d 667, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-662. Insurance Company of North America, Petitioner v M/V Ocean Lynx, aka M/V Ocean Link, Her Engines, Tackle, Furnishings, et al.

498 US 1025, 112 L Ed 2d 667, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 934.

No. 90-672. Gary Plastic Packaging Corporation, Petitioner v Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.

498 US 1025, 112 L Ed 2d 667, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 903 F2d 176.

No. 90-683. Georgia Marble Company, Petitioner v Walter Cecil Whitlock, et ux.

498 US 1026, 112 L Ed 2d 667, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 260 Ga 350, 392 SE2d 881.

No. 90-685. Robert N. Alday, Petitioner v Container Corporation of America, et al.

498 US 1026, 112 L Ed 2d 668, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 906 F2d 660.

No. 90-688. Alma Russell, Petitioner v James O'Grady, et al.

498 US 1026, 112 L Ed 2d 668, 111 S Ct 675.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-690. Susan K. Denton Christy, Petitioner v James Hugh Christy

498 US 1026, 112 L Ed 2d 668, 111 S Ct 676.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fifth Appellate District, denied.

No. 90-691. East Prince Frederick Corporation, Petitioner v Board of County Commissioners of Calvert County, Maryland

498 US 1026, 112 L Ed 2d 668, 111 S Ct 676.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 320 Md 178, 577 A2d 27.

No. 90-694. Joseph Daniel Brockington, et ux., Petitioners v Certified Electric, Inc.

498 US 1026, 112 L Ed 2d 668, 111 S Ct 676.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 1523.

No. 90-696. Leo Heideman, et ux., Petitioners v PFL, Inc.

498 US 1026, 112 L Ed 2d 668, 111 S Ct 676.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 904 F2d 1262.

No. 90-698. Allene Fields and Earline Daniels, Petitioners v Hallsville Independent School District, et al.

498 US 1026, 112 L Ed 2d 668, 111 S Ct 676.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 906 F2d 1017.

No. 90-699. United Transportation Union, Petitioner v CSX Transportation, Inc.

498 US 1026, 112 L Ed 2d 669, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 902 F2d 36.

No. 90-700. S & H Contractors, Inc., Petitioner v A. J. Taft Coal Company, Inc.

498 US 1026, 112 L Ed 2d 669, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 906 F2d 1507.

No. 90-701. A. L. Lockhart, Superintendent, Arkansas Department of Correction, et al., Petitioners v Bilal Ali Salaam, aka Kevin Robinson

498 US 1026, 112 L Ed 2d 669, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 1168.

No. 90-706. Enid R. Brahms, Petitioner v Michael Alan Schwartz, Grievance Administrator, Michigan Attorney Grievance Commission

498 US 1026, 112 L Ed 2d 669, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Michigan denied.

Same case below, 434 Mich 1212.

No. 90-710. St. Paul Fire and Marine Insurance Company, Petitioner v Superior Court of California for the City and County of San Francisco (James Lee Jones, et al., Real Parties in Interest)

498 US 1027, 112 L Ed 2d 669, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-715. Jay Grushkin, Petitioner v Santa Clara Superior Court

498 US 1027, 112 L Ed 2d 670, 111 S Ct 677.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, Sixth Appellate District, denied.

No. 90-716. Lawrence S. Krain, Petitioner v Margaret Johnson, et al.

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-721. Emory L. Clark, Petitioner v Thomson McKinnon Securities, Inc.

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1568.

No. 90-723. Mashuq A. Qureshi, Petitioner v Phico Insurance Company, et al.

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-732. In Re Louis Kerlinsky, Petitioner

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 406 Mass 67, 546 NE2d 150.

No. 90-734. Peter Paul Mitrano, Petitioner v Karin C. Ruble

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Virginia denied.

No. 90-736. Donna Teagardener, et al., Petitioners v Republic-Franklin Incorporated Pension Plan, et al.

498 US 1027, 112 L Ed 2d 670, 111 S Ct 678.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 947.

No. 90-738. Joseph E. Schnorbus, et al., Petitioners v Director of Revenue of Missouri

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 790 SW2d 241.

No. 90-739. James E. Renfro, Sr., et al., Petitioners v Kentucky Board of Dentistry, et al.

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Kentucky denied.

No. 90-742. Jose A. Soto, Petitioner v United States Postal Service

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 905 F2d 537.

No. 90-746. William Kuntz, III, Petitioner v Little Miami Railroad Company

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Cuyahoga County, denied.

No. 90-751. O. R. Karst, Petitioner v John Woods

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-754. Calvin J. Perkins, Petitioner v Farm Credit Bank of Wichita, et al.

498 US 1027, 112 L Ed 2d 671, 111 S Ct 679.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-755. Elizabeth Warne, Petitioner v Superior Court of California, Los Angeles County (Kaiser Permanente Medical Center, et al., Real Parties in Interest)

498 US 1008, 112 L Ed 2d 671, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-775. Hipolito Rivera-Ramirez, Petitioner v United States

498 US 1028, 112 L Ed 2d 672, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 739.

No. 90-778. John A. Kraemer, Petitioner v Patrick J. Spellacy, et al.

498 US 1028, 112 L Ed 2d 672, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1579.

No. 90-786. Frank L. Gray, Petitioner v Indiana

498 US 1028, 112 L Ed 2d 672, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-788. Edward Halas, Petitioner v Department of Energy

498 US 1028, 112 L Ed 2d 672, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 915 F2d 1583.

No. 90-809. George Bernesser, Petitioner v United States

498 US 1028, 112 L Ed 2d 672, 111 S Ct 680.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 332.

No. 90-823. Lawrence Albert, Petitioner v United States

498 US 1028, 112 L Ed 2d 672, 111 S Ct 681.

January 7, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 30 MJ 331.

No. 90-824. Juan Delgado, Dagoberto Silva, and Henry Escobar, Petitioners v United States

498 US 1028, 112 L Ed 2d 673, 111 S Ct 681.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 1495.

No. 90-836. Antonio Mareno, Jr., Petitioner v Thomas Rowe, et al.

498 US 1028, 112 L Ed 2d 673, 111 S Ct 681, reh den (US) 123 L Ed 2d 507, 113 S Ct 1890.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 910 F2d 1043.

No. 90-843. James L. Pratt, Jr., Petitioner v United States

498 US 1028, 112 L Ed 2d 673, 111 S Ct 681.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 913 F2d 982.

No. 90-849. County of Los Angeles, et al., Petitioners v Yolanda Garza, et al.

498 US 1028, 112 L Ed 2d 673, 111 S Ct 681.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 918 F2d 763.

No. 90-881. Keith Deerman and Francis G. Kinney, Petitioners v United States

498 US 1028, 112 L Ed 2d 673, 111 S Ct 681.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 728.

No. 90-886. Daniel Meis, Petitioner v Frank Gunter, et al.

498 US 1028, 112 L Ed 2d 673, 111 S Ct 682.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 906 F2d 364.

No. 90-5178. Mohammad Haleem Khan, Petitioner v United States

498 US 1028, 112 L Ed 2d 674, 111 S Ct 682.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 869 F2d 661.

No. 90-5220. Chester Vinton Haas, III, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice

498 US 1028, 112 L Ed 2d 674, 111 S Ct 682.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5309. Jim W. Mathews, Petitioner v United States

498 US 1029, 112 L Ed 2d 674, 111 S Ct 682.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 900 F2d 265.

No. 90-5423. Patty Lockhart, Petitioner v United States

No. 90-5473. John Lockhart, Petitioner v United States

498 US 1029, 112 L Ed 2d 674, 111 S Ct 682.

January 7, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 904 F2d 714.

No. 90-5446. Bennie Wren Bolton, Petitioner v United States

498 US 1029, 112 L Ed 2d 674, 111 S Ct 683.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 905 F2d 319, 110 ALR Fed 513.

No. 90-5515. Russell Smrekar, Petitioner v Illinois

498 US 1029, 112 L Ed 2d 674, 111 S Ct 683.

January 7, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, Fourth District, denied.

Same case below, 193 Ill App 3d 534, 140 Ill Dec 521, 550 NE2d 3.

No. 90-5596. Foster Lee Stephen, Petitioner v United States

498 US 1029, 112 L Ed 2d 674, 111 S Ct 683.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 704.

No. 90-5598. Raymond Wagstaff, Petitioner v P. W. Keohane, Warden

498 US 1029, 112 L Ed 2d 675, 111 S Ct 683.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 697.

No. 90-5627. Donald Eugene Johnson and Robert William Jones, Petitioners v United States

498 US 1029, 112 L Ed 2d 675, 111 S Ct 683, reh den 498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 907 F2d 456.

No. 90-5680. Refugio Gonzales, Petitioner v United States

498 US 1029, 112 L Ed 2d 675, 111 S Ct 683.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 897 F2d 1312.

No. 90-5687. Douglas Aponte, Petitioner v United States

498 US 1029, 112 L Ed 2d 675, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 909 F2d 1491.

No. 90-5692. Steven Leon Rolle, Petitioner v United States

498 US 1029, 112 L Ed 2d 675, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-5705. Jonathon Marshall, Petitioner v Robert Manes, et al.

498 US 1029, 112 L Ed 2d 675, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1568.

No. 90-5712. Robert D. Beaman, Petitioner v Department of Veterans Affairs, et al.

498 US 1029, 112 L Ed 2d 676, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 900 F2d 249.

No. 90-5725. Margarita Martinez de Ortiz, Petitioner v United States

498 US 1029, 112 L Ed 2d 676, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 907 F2d 629.

No. 90-5731. Elaine F. Chase, Petitioner v Oregon

498 US 1029, 112 L Ed 2d 676, 111 S Ct 684.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 100 Or App 552, 787 P2d 1313.

No. 90-5748. Robert Alphonso Brown, Petitioner v United States

498 US 1029, 112 L Ed 2d 676, 111 S Ct 685.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 968.

No. 90-5789. Herbert M. Jones, Sr., Petitioner v Office of Personnel Management

498 US 1030, 112 L Ed 2d 676, 111 S Ct 685.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 899 F2d 1228.

No. 90-5791. Salvatore Salamone, Petitioner v United States

498 US 1030, 112 L Ed 2d 676, 111 S Ct 685.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 902 F2d 237.

No. 90-5802. John Newark West, Petitioner v United States

498 US 1030, 112 L Ed 2d 676, 111 S Ct 685.

January 7, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 1493.

No. 90-5814. Antonio Martinez, Petitioner v United States

498 US 1030, 112 L Ed 2d 677, 111 S Ct 685.

January 7, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

Same case below, 566 A2d 1049.

No. 90-5817. Ronald C. Ruloff, Petitioner v Department of Veterans Affairs, et al.

498 US 1030, 112 L Ed 2d 677, 111 S Ct 686.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 145.

No. 90-5823. Otis Bobby Mecom, Petitioner v United States

498 US 1030, 112 L Ed 2d 677, 111 S Ct 686.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1567.

No. 90-5835. Bruce Campbell Adamson, Petitioner v Anthony M. Frank, Postmaster General

498 US 1030, 112 L Ed 2d 677, 111 S Ct 686.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 40.

No. 90-5846. Wayne E. Barnes, Petitioner v United States

498 US 1030, 112 L Ed 2d 677, 111 S Ct 686.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1543.

No. 90-5865. Ellis Manns, Petitioner v United States

498 US 1030, 112 L Ed 2d 677, 111 S Ct 686.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 1100.

No. 90-5886. John D. Crouch, Petitioner v American National Bank, et al.

498 US 1030, 112 L Ed 2d 678, 111 S Ct 686, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 696.

No. 90-5889. Gary Benjamin Williams, Petitioner v United States

498 US 1030, 112 L Ed 2d 678, 111 S Ct 687.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 905 F2d 217.

No. 90-5904. Daniel Whisenant, Petitioner v Kentucky

498 US 1030, 112 L Ed 2d 678, 111 S Ct 687.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

No. 90-5931. James Michael Harris, Petitioner v Bill Cato, et al.

498 US 1030, 112 L Ed 2d 678, 111 S Ct 687, reh den 498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5935. Joseph A. Havens, Petitioner v United States

498 US 1030, 112 L Ed 2d 678, 111 S Ct 687.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 910 F2d 703.

No. 90-5979. Daren Damont Gray, Petitioner v Minnesota

498 US 1030, 112 L Ed 2d 678, 111 S Ct 687.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Minnesota denied.

Same case below, 456 NW2d 251.

No. 90-6012. Otis Dolphin, Jr., Petitioner v Mr. Phipps and The Jockey Club

498 US 1031, 112 L Ed 2d 678, 111 S Ct 688, reh den (US) 113 L Ed 2d 671, 111 S Ct 1609.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6013. John Lee Tiller, Petitioner v Paul Klincar, et al.

498 US 1031, 112 L Ed 2d 679, 111 S Ct 688.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 138 Ill 2d 1, 149 Ill Dec 206, 561 NE2d 576.

No. 90-6015. Derek L. Vinson, Petitioner v Officer Chapa, et al.

498 US 1031, 112 L Ed 2d 679, 111 S Ct 688.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 1467.

No. 90-6019. Edward N. Carlton, Petitioner v John Jabe

498 US 1031, 112 L Ed 2d 679, 111 S Ct 688.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 1482.

No. 90-6024. Cecil R. Vaughan, Petitioner v Rock Church, Incorporated

498 US 1031, 112 L Ed 2d 679, 111 S Ct 688, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-6025. Terry Eugene Bennett, Petitioner v Oklahoma

498 US 1031, 112 L Ed 2d 679, 111 S Ct 688.

January 7, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

Same case below, 795 P2d 1055.

No. 90-6026. Peter X. Cunningham, aka Romania Peter Cunningham, Petitioner v United States

498 US 1031, 112 L Ed 2d 679, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6028. Robert Houston Woods, Petitioner v United States

498 US 1031, 112 L Ed 2d 680, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 902 F2d 1320.

No. 90-6030. Vladimir Zatko, Petitioner v United States District Court for the Northern District of California

498 US 1031, 112 L Ed 2d 680, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6032. Aaron B. Scruggs, Petitioner v Tom Bradley, et al.

498 US 1031, 112 L Ed 2d 680, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1579.

No. 90-6033. Fred Whitaker, Petitioner v Donald Pascarella, et al.

498 US 1031, 112 L Ed 2d 680, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-6035. James T. Fite, Petitioner v Leon Burns, Jr., et al.

498 US 1031, 112 L Ed 2d 680, 111 S Ct 689.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6040. Bill Herron, Petitioner v David Kite, et al.

498 US 1031, 112 L Ed 2d 680, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6046. Gary D. Tebbets, Petitioner v City of Overland Park, Kansas

498 US 1031, 112 L Ed 2d 680, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Kansas denied.

No. 90-6049. Vernetta I. Steele, Petitioner v County of Los Angeles

498 US 1031, 112 L Ed 2d 681, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-6055. Darryl Moore, Petitioner v Illinois

498 US 1031, 112 L Ed 2d 681, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 199 Ill App 3d 747, 145 Ill Dec 767, 557 NE2d 537.

No. 90-6056. Earl Grooms, Petitioner v Prince George's County

498 US 1032, 112 L Ed 2d 681, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 967.

No. 90-6058. W. J. Russell Taylor, Petitioner v Monsanto Company, et al.

498 US 1032, 112 L Ed 2d 681, 111 S Ct 690.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 510.

No. 90-6065. Daiva Richardson, Petitioner v City of South Euclid, Ohio, et al.

498 US 1032, 112 L Ed 2d 681, 111 S Ct 691.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 1050.

No. 90-6068. Kevin Mark Bowles, Petitioner v T.N. Nance, Judge of the Circuit Court of the City of Richmond, et al.

498 US 1032, 112 L Ed 2d 681, 111 S Ct 691.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 904 F2d 699.

No. 90-6069. Percy E. Cooksey, III, Petitioner v Missouri

498 US 1032, 112 L Ed 2d 681, 111 S Ct 691.

January 7, 1991. Petition for writ

of certiorari to the Court of Appeals of Missouri, Eastern District, denied.

Same case below, 787 SW2d 324.

No. 90-6073. Dexter Crockett, Petitioner v United States

498 US 1032, 112 L Ed 2d 682, 111 S Ct 691.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 252.

No. 90-6078. John Alan Johnson, Petitioner v California

498 US 1032, 112 L Ed 2d 682, 111 S Ct 691.

January 7, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-6079. Bobby Dale Smith, Petitioner v United States

498 US 1032, 112 L Ed 2d 682, 111 S Ct 691.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 1164.

No. 90-6080. Bobby Dean Huckaby, Petitioner v Oklahoma, et al.

498 US 1032, 112 L Ed 2d 682, 111 S Ct 692.

January 7, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Oklahoma denied.

No. 90-6087. Samuel F. Wright, Petitioner v Vermont

498 US 1032, 112 L Ed 2d 682, 111 S Ct 692.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Vermont denied.

Same case below, 154 Vt 512, 581 A2d 720.

No. 90-6094. James Wilken, Petitioner v John Whitley, Warden, et al.

498 US 1032, 112 L Ed 2d 682, 111 S Ct 692, reh den (US) 114 L Ed 2d 730, 111 S Ct 2255.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 957.

No. 90-6102. Debra Henne and Linda Spidell, et al., Petitioners v Gregg Wright and Stanley S. Cooper

498 US 1032, 112 L Ed 2d 682, 111 S Ct 692.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 904 F2d 1208.

No. 90-6104. Lincoln Lane Addleman, Petitioner v Washington, et al.

498 US 1032, 112 L Ed 2d 683, 111 S Ct 692.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6107. Lincoln Lane Addleman, Petitioner v Board of Prison Terms and Paroles, et al.

498 US 1032, 112 L Ed 2d 683, 111 S Ct 692.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6112. David Felton, Petitioner v Talmadge Barnett, et al.

498 US 1032, 112 L Ed 2d 683, 111 S Ct 693.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 92.

No. 90-6115. Walter B. Bull, Jr., Petitioner v United States

498 US 1032, 112 L Ed 2d 683, 111 S Ct 693.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6116. James Canterbury, Petitioner v Edward Francis Kalisz

498 US 1033, 112 L Ed 2d 683, 111 S Ct 693, reh den 498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-6117. Lawrence Tamale, Petitioner v Regents of the University of California, et al.

498 US 1033, 112 L Ed 2d 683, 111 S Ct 693.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 977.

No. 90-6123. David G. Lanam, Petitioner v Minnesota

498 US 1033, 112 L Ed 2d 684, 111 S Ct 693.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Minnesota denied.

Same case below, 459 NW2d 656.

No. 90-6125. Billy Holmes, aka Billy Richards, Petitioner v Ray Hardy, et al.

498 US 1033, 112 L Ed 2d 684, 111 S Ct 693.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 693.

No. 90-6127. Jerry Allen Taylor, Petitioner v T. K. International, Inc., Shopmen's Local 620 Union

498 US 1033, 112 L Ed 2d 684, 111 S Ct 694, reh den (US) 113 L Ed 2d 672, 111 S Ct 1610.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6129. James Allen Peters, Petitioner v John Runda, et al.

498 US 1033, 112 L Ed 2d 684, 111 S Ct 694.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 733.

No. 90-6131. Andrew Walker, Petitioner v David Rardin, et al.

498 US 1033, 112 L Ed 2d 684, 111 S Ct 694.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-6133. Fabio Diaz, Petitioner v John Rojeski, et al.

498 US 1033, 112 L Ed 2d 684, 111 S Ct 694.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 731.

No. 90-6134. Edward Smith, Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary

498 US 1033, 112 L Ed 2d 685, 111 S Ct 694.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 581.

No. 90-6136. James S. Greene, Petitioner v Dutch Point Credit Union

498 US 1033, 112 L Ed 2d 685, 111 S Ct 694.

January 7, 1991. Petition for writ of certiorari to the Appellate Court of Connecticut denied.

No. 90-6139. John Levy, Petitioner v United States

498 US 1033, 112 L Ed 2d 685, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 908 F2d 969.

No. 90-6140. Roger R. Larson, Petitioner v Gene O'Connell, et al.

498 US 1033, 112 L Ed 2d 685, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, Fourth District denied.

No. 90-6143. Randolph Garaux, Petitioner v Daniel Vasquez, Warden

498 US 1033, 112 L Ed 2d 685, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 916 F2d 716.

No. 90-6149. Gustavo Guerrero, Petitioner v United States

498 US 1033, 112 L Ed 2d 685, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1468.

No. 90-6151. Jerry Wayne Brooks, Petitioner v Attorney General of the State of Alabama

498 US 1033, 112 L Ed 2d 685, 111 S Ct 695.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-6152. Darrell Lamont Bailey, Petitioner v United States (two cases)

498 US 1034, 112 L Ed 2d 686, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-6154. William Cooper, Petitioner v Dale Stallman, et al.

498 US 1034, 112 L Ed 2d 686, 111 S Ct 695.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1578.

No. 90-6158. Gladys Graham, Buford Graham, and David McCrary, Petitioners v United States

498 US 1034, 112 L Ed 2d 686, 111 S Ct 696.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1576.

No. 90-6159. Arlene Martin, et al., Petitioners v Dana Marriner, et al.

498 US 1034, 112 L Ed 2d 686, 111 S Ct 696.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 904 F2d 120.

No. 90-6161. Merrill Larry Ivery, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1034, 112 L Ed 2d 686, 111 S Ct 696.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6162. Fonnie Holly, Petitioner v John P. Whitley, Warden

498 US 1034, 112 L Ed 2d 686, 111 S Ct 696.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6164. John Steven McPeak, Petitioner v Jeff Reynolds, Commissioner, Tennessee Department of Corrections, et al.

498 US 1034, 112 L Ed 2d 687, 111 S Ct 696.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1572.

No. 90-6165. Bobbie L. Todd, Petitioner v United States

498 US 1034, 112 L Ed 2d 687, 111 S Ct 697.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 250.

No. 90-6168. Paul Henry Horstmann and Bertha Beatrice Horstmann, Petitioners v Harley H. Swink, et al.

498 US 1034, 112 L Ed 2d 687, 111 S Ct 697.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6171. Walter J. Moore, Petitioner v Kansas Department of Social and Rehabilitation Services, et al.

498 US 1034, 112 L Ed 2d 687, 111 S Ct 697, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6172. Edmund F. Wakelin, Sr., et al., Petitioners v Leonard M. Gulino

498 US 1034, 112 L Ed 2d 687, 111 S Ct 697.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

No. 90-6175. Richard M. Blackstock, Petitioner v Farm and Home Savings Association

498 US 1034, 112 L Ed 2d 687, 111 S Ct 697.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Missouri, Western District, denied.

Same case below, 792 SW2d 9.

No. 90-6176. Walid Ahmed Abuelhawa, Petitioner v United States

498 US 1034, 112 L Ed 2d 688, 111 S Ct 697.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6178. Rory D. Nitcher, Petitioner v Donald Cline, et al.

498 US 1034, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6183. Paul M. Humphrey, Petitioner v Ohio Department of Rehabilitation and Correction

498 US 1034, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Franklin County, denied.

No. 90-6194. William L. Marshall, Petitioner v Thomas A. Fulcomer, Superintendent, State Correctional Institution at Huntingdon, et al.

498 US 1035, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 243.

No. 90-6197. Robert Estrada, Jr., Petitioner v United States

498 US 1035, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6198. Jose C. Rodriguez, Petitioner v Warren Young, Warden

498 US 1035, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 906 F2d 1153.

No. 90-6200. Michael Garrett Williams, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1035, 112 L Ed 2d 688, 111 S Ct 698.

January 7, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 729.

No. 90-6203. Herbert Charles Blatchford, Jr., Petitioner v George Sullivan, Warden, et al.

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 904 F2d 542.

No. 90-6204. Louis Ramos, Petitioner v United States

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6206. Miriam Galindo, Petitioner v United States

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 913 F2d 777.

No. 90-6207. Under Seal, Petitioner v United States

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 250.

No. 90-6208. Clifford John Collins, Petitioner v Sgt. Halcott, et al.

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6209. Norberto Gomez, Petitioner v United States

498 US 1035, 112 L Ed 2d 689, 111 S Ct 699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 809.

No. 90-6211. John Bousquet, Petitioner v New Hampshire

498 US 1035, 112 L Ed 2d 690, 111 S Ct 700.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of New Hampshire denied.

Same case below, 133 NH 485, 578 A2d 853.

No. 90-6214. Brett Charles Diemer, Petitioner v United States

498 US 1035, 112 L Ed 2d 690, 111 S Ct 700.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 28.

No. 90-6215. Juan L. Steward, Petitioner v H. Lawrence Garrett, III, Secretary of the Navy, et al.

498 US 1035, 112 L Ed 2d 690, 111 S Ct 700, reh den (US) 113 L Ed 2d 232, 111 S Ct 1124.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1492.

No. 90-6216. Angel Rodriguez, Petitioner v Pat Arvonio, Administrator, East Jersey State Prison

498 US 1035, 112 L Ed 2d 690, 111 S Ct 700.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6217. Larry Stephen Robbins, Petitioner v United States

498 US 1036, 112 L Ed 2d 690, 111 S Ct 700.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 1497.

No. 90-6220. Sessi Adamu, Petitioner v United States

498 US 1036, 112 L Ed 2d 690, 111 S Ct 700.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6226. Herschel Colbert, Petitioner v Ohio

498 US 1036, 112 L Ed 2d 690, 111 S Ct 701.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Hamilton County, denied.

No. 90-6230. James L. Martin, Petitioner v Stephen W. Townsend, et al.

498 US 1036, 112 L Ed 2d 691, 111 S Ct 701, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 135.

No. 90-6231. Thomas K. Holland, Petitioner v United States

498 US 1036, 112 L Ed 2d 691, 111 S Ct 701.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1469.

No. 90-6234. Roger L. Lyle, Petitioner v Anne Cords, et al.

498 US 1036, 112 L Ed 2d 691, 111 S Ct 701.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1572.

No. 90-6236. Morad Khan Dorani, Petitioner v United States

498 US 1036, 112 L Ed 2d 691, 111 S Ct 701.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 1485.

No. 90-6237. Joel S. Flakes, Petitioner v Wisconsin

498 US 1036, 112 L Ed 2d 691, 111 S Ct 701.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

No. 90-6240. Juvenile Action No. JV-115567, Petitioner v Arizona

498 US 1036, 112 L Ed 2d 691, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied.

No. 90-6246. Janet M. Phillippi, Petitioner v United States

498 US 1036, 112 L Ed 2d 691, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 911 F2d 149.

No. 90-6247. Sunrise Harmony, aka Stephen Semple, Petitioner v United States

498 US 1036, 112 L Ed 2d 692, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 244, 899 F2d 52.

No. 90-6249. John Berry, Petitioner v United States

498 US 1036, 112 L Ed 2d 692, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 263.

No. 90-6256. Rigoberto Santana, Petitioner v United States

498 US 1036, 112 L Ed 2d 692, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 506.

No. 90-6258. Gregory Pierre, Petitioner v United States

498 US 1036, 112 L Ed 2d 692, 111 S Ct 702.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 269.

No. 90-6260. George Sassower, Petitioner v Richard L. Thornburgh

498 US 1036, 112 L Ed 2d 692, 111 S Ct 703.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-6264. George Anthony Bennett and Jerry Robert Anderson, Petitioners v United States

498 US 1036, 112 L Ed 2d 692, 111 S Ct 703.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-6267. Carl Martin, Jr., Petitioner v United States

498 US 1037, 112 L Ed 2d 692, 111 S Ct 703.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6269. Ali Fazale Khaliq, Petitioner v United States

498 US 1037, 112 L Ed 2d 693, 111 S Ct 703.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 137.

No. 90-6272. Robert Leon Du'Hart, Petitioner v Arizona

498 US 1037, 112 L Ed 2d 693, 111 S Ct 703.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Arizona denied.

No. 90-6273. James Gibson, Petitioner v United States

498 US 1037, 112 L Ed 2d 693, 111 S Ct 703.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 1499.

No. 90-6279. Raymond F. Stinson, Petitioner v Kentucky

498 US 1037, 112 L Ed 2d 693, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the Court of Appeals of Kentucky denied.

No. 90-6284. William Conley, Petitioner v Warden, Maryland Penitentiary

498 US 1037, 112 L Ed 2d 693, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 463.

No. 90-6286. Charles A. Boland, Petitioner v General Motors Corporation, et al.

498 US 1037, 112 L Ed 2d 693, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 961.

No. 90-6288. Levelt Francois, Petitioner v United States

498 US 1037, 112 L Ed 2d 694, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 249.

No. 90-6292. Fonza David Jackson, Petitioner v John Jabe, Warden

498 US 1037, 112 L Ed 2d 694, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6295. Terrell Lynne King, Petitioner v United States

498 US 1037, 112 L Ed 2d 694, 111 S Ct 704.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 739.

No. 90-6298. Brian G. Breeding, Petitioner v J. O. Davis, Warden, et al.

498 US 1037, 112 L Ed 2d 694, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1469.

No. 90-6299. Clarence Williams, Petitioner v United States

498 US 1037, 112 L Ed 2d 694, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 1467.

No. 90-6300. John D. Presley, Petitioner v United States

498 US 1037, 112 L Ed 2d 694, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 151.

No. 90-6305. Isa Danasabe Yusufu, Petitioner v United States

498 US 1037, 112 L Ed 2d 694, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 727.

No. 90-6306. Raymond M. Pineda, Petitioner v United States

498 US 1037, 112 L Ed 2d 695, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6307. Richard L. Clark, Petitioner v United States

498 US 1037, 112 L Ed 2d 695, 111 S Ct 705.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 1087.

No. 90-6308. Gene Gray, Petitioner v Board of County Commissioners for the County of El Paso, Colorado, et al.

498 US 1038, 112 L Ed 2d 695, 111 S Ct 706, reh den (US) 114 L Ed 2d 93, 111 S Ct 1699.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6310. Gary Lincoln Young, Petitioner v United States

498 US 1038, 112 L Ed 2d 695, 111 S Ct 706.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-6312. Jose William Franco, Petitioner v United States

498 US 1038, 112 L Ed 2d 695, 111 S Ct 706.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6316. Jose Sardina, Petitioner v United States

498 US 1038, 112 L Ed 2d 695, 111 S Ct 706.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-6319. Herman Louis Bright, Petitioner v United States

498 US 1038, 112 L Ed 2d 695, 111 S Ct 706.

January 7, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-6321. John James Tribell, Petitioner v Hartwell R. Hatfield, Warden, et al.

498 US 1038, 112 L Ed 2d 696, 111 S Ct 706.

January 7, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Tennessee, Middle Division, denied.

No. 90-6327. John Jacecko, Petitioner v West Chester State University, et al.

498 US 1038, 112 L Ed 2d 696, 111 S Ct 707.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 911 F2d 719.

No. 90-6331. Damien Hawkins and Peter Hawkins, Petitioners v United States

498 US 1038, 112 L Ed 2d 696, 111 S Ct 707.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1489.

No. 90-6333. Horace Holmes, Jr., Petitioner v United States

498 US 1038, 112 L Ed 2d 696, 111 S Ct 707.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-6335. Robert Brant, Petitioner v United States

498 US 1038, 112 L Ed 2d 696, 111 S Ct 707.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6341. Garry David Gallardo, Petitioner v United States

498 US 1038, 112 L Ed 2d 696, 111 S Ct 707, reh den (US) 113 L Ed 2d 232, 111 S Ct 1125.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 149.

No. 90-6342. Leonard Epps, Petitioner v United States

498 US 1038, 112 L Ed 2d 697, 111 S Ct 707.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 721.

No. 90-6343. Filippo Filiberto, Petitioner v United States

498 US 1038, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 1560.

No. 90-6346. Luis Humberto Martinez, Petitioner v United States

498 US 1038, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 739.

No. 90-6348. John Henry Griffin, Petitioner v United States

498 US 1038, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 1222.

No. 90-6349. Keith Elliott Colbert, Petitioner v United States

498 US 1039, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6350. Earl Tyrone Williams, Petitioner v United States

498 US 1039, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-6360. Jack I. Ice, Petitioner v United States

498 US 1039, 112 L Ed 2d 697, 111 S Ct 708.

January 7, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6361. Lonnie Dawson, Petitioner v United States

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6365. Donny Joel Harvey, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 919 F2d 736.

No. 90-6369. Michael E. Galloway, Petitioner v United States

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 242.

No. 90-6378. Andrew Matthew Winfrey, Petitioner v United States

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 212.

No. 90-6382. Jose Cruz, Petitioner v United States

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 910 F2d 1072.

No. 90-6384. Richard Snyder, Petitioner v United States

498 US 1039, 112 L Ed 2d 698, 111 S Ct 709.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 913 F2d 300.

No. 90-6387. Pedro Camilo, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 914 F2d 239.

No. 90-6396. Leon Glaspy, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1468.

No. 90-6398. Amado Lopez, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-6404. Dennis Ray Paden, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 908 F2d 1229.

No. 90-6407. Rodney L. Dennard, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 1561.

No. 90-6412. Nestor William Galindo, Petitioner v United States

498 US 1039, 112 L Ed 2d 699, 111 S Ct 710.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 913 F2d 777.

No. 90-6425. Kenneth Mathews, Petitioner v United States

498 US 1040, 112 L Ed 2d 699, 111 S Ct 711.

January 7, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 560.

No. 89-1421. Marvin Powell, et al., Petitioners v National Football League, et al.

498 US 1040, 112 L Ed 2d 700, 111 S Ct 711.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice White and Justice Blackmun would grant certiorari.

Same case below, 888 F2d 559.

No. 90-271. Joseph N. Aquilina, Petitioner v Immigration and Naturalization Service

498 US 1040, 112 L Ed 2d 700, 111 S Ct 711, reh den 498 US 1128, 112 L Ed 2d 1198, 111 S Ct 1094.

January 7, 1991. The motion of Rosemarie Barone and Joseph W. Aquilina for leave to intervene is denied. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 899 F2d 1221.

No. 90-401. Betsey Warren Lebbos, Petitioner v Supreme Judicial Court of the Commonwealth of Massachusetts

498 US 1040, 112 L Ed 2d 700, 111 S Ct 711.

January 7, 1991. The motion of G. G. Baumen for leave to file a brief as amicus curiae is granted. The motion of Harold Rauch for leave to file a brief as amicus curiae is granted. The motion of Raymond Dunn for leave to file a brief as amicus curiae is granted. The motion of Barry D. Ammon for leave to file a brief as amicus curiae is granted. The motion of Ronald Z. Berki for leave to file a brief as amicus curiae is granted. The motion of John B. Gunn for leave to file a brief as amicus curiae is granted. The motion of John Rakus for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 407 Mass 1010, 555 NE2d 233.

No. 90-429. Four County Electric Membership Corporation, Petitioner v Betsy Y. Justus, in her Official Capacity as Secretary of the North Carolina Department of Revenue

498 US 1040, 112 L Ed 2d 700, 111 S Ct 711.

January 7, 1991. The motion of National Rural Electric Cooperative Association, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the Court of Appeals of North Carolina denied.

Same case below, 96 NC App 417, 386 SE2d 107.

No. 90-444. Alabama, Petitioner v Jerry Ray Carrell

498 US 1040, 112 L Ed 2d 701, 111 S Ct 712.

January 7, 1991. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 565 So 2d 104.

No. 90-489. Jack R. Duckworth, Superintendent, Indiana State Prison, et al., Petitioners v William E. Crank

498 US 1040, 112 L Ed 2d 701, 111 S Ct 712.

January 7, 1991. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 1090.

No. 90-494. Blue Cross and Blue Shield of Alabama, et al., Petitioners v Fred Brown

498 US 1040, 112 L Ed 2d 701, 111 S Ct 712.

January 7, 1991. The motion of American Council of Life Insurance, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 1556.

No. 90-546. Susan Griffith, et al., Petitioners v Marlin Johnston, Individually and as Commissioner of the Texas Department of Human Services

498 US 1040, 112 L Ed 2d 701, 111 S Ct 712.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied. Justice White would grant certiorari.

Same case below, 899 F2d 1427.

No. 90-750. Joseph Zinker, Executor of the Estate of Nancy Zinker, Deceased, Petitioner v J. Paul Doty and Judith A. Kemp

498 US 1041, 112 L Ed 2d 701, 111 S Ct 712.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice White would grant certiorari.

Same case below, 907 F2d 357.

No. 90-5535. Joseph J. Christoph, Petitioner v United States

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied. Justice White would grant certiorari.

Same case below, 904 F2d 1036.

No. 90-608. William H. Kucharek, et al., Petitioners v Donald J. Hanaway, Attorney General of Wisconsin

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. The motion of Children's Legal Foundation, Inc., et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 902 F2d 513.

No. 90-676. Miami Center Limited Partnership, et al., Petitioners v Bank of New York

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. The motion of petitioners to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 931.

No. 90-5536. Henry H. Amsden, Petitioner v Thomas F. Moran, et al.

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 904 F2d 748.

No. 90-5872 (A-338). Alga Hope, Jr., Petitioner v United States

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. The application for stay of mandate, addressed to Justice Marshall and referred to the Court, is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1013.

No. 90-5932. Donald Miller, Petitioner v California

498 US 1041, 112 L Ed 2d 702, 111 S Ct 713.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 954, 269 Cal Rptr 492, 790 P2d 1289.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6044. Norman Darrell Baxter, Petitioner v Ralph Kemp, Warden

498 US 1041, 112 L Ed 2d 703, 111 S Ct 714, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 260 Ga 184, 391 SE2d 754.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6111. Walter Milton Correll, Jr., Petitioner v Charles E. Thompson, Warden

498 US 1041, 112 L Ed 2d 703, 111 S Ct 714.

January 7, 1991. Petition for writ of certiorari to the Supreme Court of Virginia denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6223. Mitchell Williams, Petitioner v Zell Miller, et al.

498 US 1042, 112 L Ed 2d 703, 111 S Ct 714.

January 7, 1991. The petition for a writ of certiorari before judgment is denied.

No. 90-6253. In Re Charlie Eastland and P.J. Eastland, Petitioners

498 US 1022, 112 L Ed 2d 703, 111 S Ct 714.

January 7, 1991. The petition for writ of habeas corpus is denied.

No. 90-5974. In Re John D. Crouch, Petitioner

498 US 1022, 112 L Ed 2d 703, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus is denied.

No. 90-6057. In Re Harold Smith, Petitioner

498 US 1022, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus is denied.

No. 90-6110. In Re Kwasi Seitu, Petitioner

498 US 1022, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus is denied.

No. 90-6160. In Re Audrey Miller, Petitioner

498 US 1022, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus is denied.

No. 90-6177. In Re Walter Leroy Moody, Jr., Petitioner

498 US 1023, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus is denied. Justice Stevens would grant mandamus.

No. 90-6180. In Re Raymond H. Hertel, Rita M. Hertel, and Ronald J. Hertel, Petitioners

498 US 1023, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for writ of mandamus and/or prohibition is denied.

No. 90-295. Billy J. Temple, Petitioner v Synthes Corporation, Ltd.

498 US 1042, 112 L Ed 2d 704, 111 S Ct 715.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 5, 112 L Ed 2d 263, 111 S Ct 315.

No. 90-430. Paulette Shelton, Petitioner v Greater Cleveland Regional Transit Authority

498 US 1042, 112 L Ed 2d 704, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 941, 112 L Ed 2d 313, 111 S Ct 349.

No. 90-475. Arthur Falkner, et ux., Petitioners v United States District Court for the Southern District of Florida

498 US 1042, 112 L Ed 2d 704, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 959, 112 L Ed 2d 398, 111 S Ct 388.

No. 90-5380. Anthony Edwards, Petitioner v United States

498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 969, 112 L Ed 2d 418, 111 S Ct 434.

No. 90-5472. In Re Morris May, Petitioner

498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 944, 112 L Ed 2d 318, 111 S Ct 354.

No. 90-5574. Joyce Anne Dabish, Petitioner v Chrysler Corporation

498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 944, 112 L Ed 2d 319, 111 S Ct 356.

No. 90-5580. Donna Carvalho, Petitioner v Public Employees Federation, et al.

498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 944, 112 L Ed 2d 320, 111 S Ct 357.

No. 90-5585. Taj Jarallah, Petitioner v Pickett Hotel Company, dba Pickett Suite Hotel, et al.

498 US 1042, 112 L Ed 2d 705, 111 S Ct 716.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 945, 112 L Ed 2d 320, 111 S Ct 357.

No. 90-5614. Harry A. Coombs, Petitioner v N. L. Chemicals, Inc., et al.

498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 945, 112 L Ed 2d 322, 111 S Ct 359.

No. 90-5643. In Re Ronnie Lee Alston, Petitioner

498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 957, 112 L Ed 2d 408, 111 S Ct 399.

No. 90-5660. James Watts, Petitioner v James R. Cullinane, et al.

498 US 1042, 112 L Ed 2d 705, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 946, 112 L Ed 2d 324, 111 S Ct 361.

No. 90-5695. Willie Watkins, Petitioner v Department of the Treasury, et al.

498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 969, 112 L Ed 2d 418, 111 S Ct 435.

No. 90-5703. Jennie Amodeo, Petitioner v Columbia Broadcasting System, et al.

498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 960, 112 L Ed 2d 400, 111 S Ct 390.

No. 90-5727. Sylvester Jones, Petitioner v Eyvon Mendenhall, et al.

498 US 1042, 112 L Ed 2d 706, 111 S Ct 717.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 969, 112 L Ed 2d 418, 111 S Ct 435.

No. 90-5732. William Maurice Cox, Petitioner v Midge Carroll, Warden

498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 960, 112 L Ed 2d 401, 111 S Ct 391.

No. 90-5760. Henry Stepler, Petitioner v Ohio Adult Parole Authority, et al.

498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 970, 112 L Ed 2d 419, 111 S Ct 436.

No. 90-5784. William Schlicher, Petitioner v Steven Davies, et al.

498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 970, 112 L Ed 2d 420, 111 S Ct 437.

No. 90-5786. Gary Wayne Hirsch, Petitioner v Oregon

498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 949, 112 L Ed 2d 329, 111 S Ct 367.

No. 90-5795. Everett Young, Petitioner v United States

498 US 1042, 112 L Ed 2d 706, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 961, 112 L Ed 2d 402, 111 S Ct 393.

No. 90-5799. Andrew Searcy, Petitioner v Houston Lighting & Power Company, et al.

498 US 1042, 112 L Ed 2d 707, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 970, 112 L Ed 2d 421, 111 S Ct 438.

No. 90-5809. Gary Lee McColpin, Petitioner v Nola Foulston

498 US 1042, 112 L Ed 2d 707, 111 S Ct 718.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 971, 112 L Ed 2d 421, 111 S Ct 438.

No. 90-5834. Sharon Myrl Van Leeuwen and W.W.J. Van Leeuwen, Petitioners v Robert W. McCorkindale, Circuit Judge, Arkansas, et al.

498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 987, 112 L Ed 2d 535, 111 S Ct 525.

No. 90-5858. David A. Ford, Petitioner v United States

498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 961, 112 L Ed 2d 404, 111 S Ct 394.

No. 90-5866. Jo-Ann Marshburn, Petitioner v Meredith T. Richardson

498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 987, 112 L Ed 2d 536, 111 S Ct 525.

No. 90-5878. Sherman S. Weber, Petitioner v California State Bar, et al.

498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 971, 112 L Ed 2d 422, 111 S Ct 439.

No. 90-5880. Edward A. Ganey, Jr., Petitioner v Aaron J. Johnson, et al.

498 US 1042, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 988, 112 L Ed 2d 537, 111 S Ct 527.

No. 90-5885. Michael Sindram, Petitioner v Johnathon T. Moran, et al.

498 US 1043, 112 L Ed 2d 707, 111 S Ct 719.

January 7, 1991. The petition for rehearing is denied.

Former Decision, 498 US 988, 112 L Ed 2d 538, 111 S Ct 527.

No. 89-7502. Jerlene Abbott, Petitioner v Claiborne Parish School Board

498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 829, 112 L Ed 2d 61, 111 S Ct 89.

No. 89-7534. Michael W. McRae, Petitioner v Maryland

498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 830, 112 L Ed 2d 62, 111 S Ct 90.

No. 89-7702. Jack D. Liffiton, Petitioner v United States

498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 821, 112 L Ed 2d 42, 111 S Ct 68.

No. 89-7839. Robert Jackson Thompson, Petitioner v California

498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 180, 111 S Ct 226.

No. 90-5015. Carlton Gary, Petitioner v Georgia

498 US 1043, 112 L Ed 2d 708, 111 S Ct 720.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 881, 112 L Ed 2d 181, 111 S Ct 226.

No. 90-5145. Eugene H. Hewlett, Petitioner v Jeffrey A. Beard, et al.

498 US 1043, 112 L Ed 2d 708, 111 S Ct 721.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 863, 112 L Ed 2d 137, 111 S Ct 173.

No. 90-5190. John Robert Myers, Petitioner v Joseph Martinez, Warden

498 US 1043, 112 L Ed 2d 708, 111 S Ct 721.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 865, 112 L Ed 2d 141, 111 S Ct 178.

No. 90-5250. Chester N. Berman, Petitioner v John R. Griffiths, III and Diane M. Griffiths

498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 868, 112 L Ed 2d 147, 111 S Ct 184.

No. 90-5279. Mary Louise Gordon, Petitioner v Michael J. Bowers, Jr.

498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

January 7, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 869, 112 L Ed 2d 151, 111 S Ct 188.

No. 90-93. R. Dobie Langenkamp, Successor Trustee of the Bankruptcy Estates of Republic Trust & Savings Company and Republic Financial Corporation, Petitioner v C. A. Culp, et al.

498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

January 7, 1991. The petition for rehearing is denied. Justice Kennedy took no part in the consideration or decision of this petition.

Former Decision, 498 US 42, 112 L Ed 2d 343, 111 S Ct 330.

No. 90-342. Woodrow A. DeSmidt, Petitioner v Wisconsin

498 US 1043, 112 L Ed 2d 709, 111 S Ct 721.

January 10, 1991. The petition for writ of certiorari to the Supreme Court of Wisconsin in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 155 Wis 2d 119, 454 NW2d 780.

[498 US 233]

IN RE VIVIAN BERGER, Petitioner

498 US 233, 112 L Ed 2d 710, 111 S Ct 628

[No. ——]

Decided January 14, 1991.

Decision: Appointed counsel representing capital defendant before United States Supreme Court granted $5,000 in fees.

SUMMARY

An attorney who had been appointed to represent a capital defendant in proceedings before the United States Supreme Court pursuant to Rule 39.7 of the United States Supreme Court Rules filed a motion requesting compensation for such services in an amount in excess of the statutory maximum of $2,500 permitted by the Criminal Justice Act of 1964 (CJA) (18 USCS § 3006A(d)(2)) for representation of a defendant in federal appellate courts. The attorney argued that the $2,500 limit had been lifted by a provision of the Anti-Drug Abuse Amendments Act of 1988, which provision (21 USCS § 848(q)(10)) permitted courts to award compensation to appointed counsel in an amount "reasonably necessary" to insure competent representation "notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary."

On motion for attorney's fees, the United States Supreme Court granted attorney's fees in the amount of $5,000. In a per curiam opinion expressing the unanimous view of the court, it was held that (1) § 848(q)(10) authorizes federal courts to compensate attorneys appointed to represent capital defendants under the CJA in an amount exceeding the $2,500 limit set by § 3006A(d)(2); (2) adopting this general approach for attorneys appointed under Rule 39.7, and therefore turning to the question of what level of compensation is "reasonably necessary" to insure that capital defendants receive competent representation before the Supreme Court, the court will determine that appointed counsel in capital cases should be able to receive compensation in an amount not to exceed $5,000, given the rising costs of practicing law and the possibility that the $2,500 cap previously followed by the Supreme Court may, at the margins, deter otherwise willing and qualified attorneys from offering their services to represent indigent capital

defendants; and (3) the court will not adopt an individual case-by-case approach to counsel fees, since (a) such an inquiry is time-consuming, (b) its result is necessarily imprecise, and (c) it would lead the court into an area in which the Justices have little experience.

HEADNOTE

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Costs and Fees § 33; Statutes § 151 — attorney's fees — appointed counsel in capital cases

On a motion for attorney's fees filed by an attorney who had been appointed pursuant to Rule 39.7 of the United States Supreme Court Rules to represent a capital defendant in proceedings before the Supreme Court, the Supreme Court will grant such motion for fees in the amount of $5,000, because (1) although the Criminal Justice Act of 1964 (CJA) (18 USCS § 3006A(d)(2)) sets a maximum fee of $2,500 for

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7 Am Jur 2d, Attorneys at Law § 244; 32 Am Jur 2d, Federal Practice and Procedure § 252; 32A Am Jur 2d, Federal Practice and Procedure § 825

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review § 3:258; 8 Federal Procedure, L Ed, Courts and Judicial System § 20:323; 9 Federal Procedure, L Ed, Criminal Procedure § 22:382

1 Am Jur Trials 93, Setting the Fee

18 USCS § 3006A(d)(2); 21 USCS § 848(q)(10); USCS Court Rules, Supreme Court Rules, Rule 39.7

US L Ed Digest, Costs and Fees § 33

Index to Annotations, Attorneys' Fees; Supreme Court of United States

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views as to requisites for award of attorneys' fees. 77 L Ed 2d 1540.

Compensation, under subsection (d) of Criminal Justice Act of 1964 (18 USCS § 3006A(d)), of counsel appointed for accused. 9 ALR Fed 569.

Validity and construction of state statute or court rule fixing maximum fees for attorney appointed to represent indigent. 3 ALR4th 576.

appointed counsel representing defendants in federal appellate courts, a provision of the Anti-Drug Abuse Amendments Act of 1988—which provision (21 USCS § 848(q)(10)) permits courts to compensate appointed counsel in an amount "reasonably necessary" to insure competent representation "notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary"—authorizes federal courts by its terms to compensate attorneys appointed to represent capital defendants under the CJA in amounts exceeding the $2,500 limit, and such an interpretation of § 848(q)(10) is supported by guidelines developed by the Judicial Conference to assist courts in interpreting and applying § 848(q); (2) adopting this general approach for attorneys appointed under Rule 39.7, and therefore turning to the question of what level of compensation is "reasonably necessary" to insure that capital defendants receive competent representation in proceedings before the Supreme Court, the court finds that, while the quality of representation by appointed counsel in capital cases under the court's previous practice of following the $2,500 fee limit has almost invariably been high, appointed counsel in capital cases should be able to receive compensation in an amount not to exceed $5,000, given the rising costs of practicing law and the possibility that the $2,500 cap may, at the margins, deter otherwise willing and qualified attorneys from offering their services to represent indigent capital defendants; and (3) the court will decline to adopt an individual case-by-case approach to counsel fees, since (a) such an inquiry is time consuming, (b) its result is necessarily imprecise, and (c) it would lead the court into an area in which the Justices have little experience.

OPINION OF THE COURT

Per Curiam.

Petitioner Vivian Berger, appointed to represent a capital defendant in proceedings before this Court pursuant to this

Court's Rule 39.7,* has filed a motion requesting compensation for such services well in excess of the statutory maximum of $2,500 permitted under present practice by the Criminal Justice Act of 1964 (CJA), 18 USC § 3006A(d)(2) [18 USCS § 3006A(d)(2)]. Although it has been the practice of this Court to adhere to the limits of § 3006A(d)(2), petitioner argues that this statutory cap for capital cases recently has been lifted by a provision of the Anti-Drug Abuse Amendments Act of 1988, 102 Stat 4312, 21 USC § 801 et seq. [21 USCS §§ 801 et seq.], which permits the Court to award compensation in an amount "reasonably necessary" to ensure competent representation. § 848(q)(10).

The relevant statutory language is this:

> "Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys

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* Berger was appointed to represent Robyn Leroy Parks in this Court. See Saffle v Parks, 494 US 484, 108 L Ed 2d 415, 110 S Ct 1257 (1990).

> appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of paragraphs (4) through (9)."

The language of this section by its terms authorizes federal courts to compensate attorneys appointed to represent capital defendants under the CJA in an amount exceeding the $2,500 limit of 18 USC § 3006A(d)(2) [18 USCS § 3006A(d)(2)]. Guidelines developed by the Judicial Conference to assist courts in interpreting and applying the mandate of § 848(q) support this interpretation. 7 Guidelines for Administration of Criminal Justice Act (Apr. 1990). Section 6.02(A) of the Guidelines, entitled "Inapplicability of CJA Hourly Rates and Compensation Maximums," provides that counsel "shall be compensated at a rate and in an amount determined exclusively by [498 US 235] the presiding judicial officer to be reasonably necessary to obtain qualified counsel to represent the defendant, without regard to CJA hourly rates or compensation maximums." Section 6.02(B) recommends that counsel be compensated "at a rate and in an amount sufficient to cover appointed counsel's general office overhead and to ensure adequate compensation for representation provided." That section also recommends that courts "limit the hourly rate for attorney compensation in federal capital prosecutions and in death penalty federal habeas corpus proceedings between $75 and $125 per hour for in-court and out-of-court time." Ibid.

We adopt this general approach, and therefore turn to the question of what level of compensation is "reasonably necessary" to ensure that capital defendants receive competent representation in proceedings before this Court. Our Rules provide that "[i]n a case in which certiorari has been granted or jurisdiction has been noted or postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, as amended, 18 USC § 3006A [18 USCS § 3006A]." Rule 39.7. It has been our practice to award appointed counsel in both capital and noncapital cases the amount of compensation requested, up to the $2,500 cap of § 3006A(d)(2). We note that this practice has served both the Court and the parties well. Under existing practice, the level of representation by appointed counsel in capital cases has almost invariably been of high quality and the administrative ease by which requests for fees are disposed of under the bright-line rule of § 3006A(d)(2) assists in conserving the limited resources of the institution.

It could be reasonably argued, on the basis of our practice to date, that there is no need to award attorney's fees in an amount greater than the $2,500 cap in order to induce capable counsel to represent capital defendants in this Court. But we think this argument is outweighed by the possibility that the cap of $2,500 may, at the margins, deter otherwise [498 US 236] willing and qualified attorneys from offering their services to represent indigent capital defendants. Given the rising costs of practicing law today, we believe that appointed counsel in capital cases should be able to receive compensation in an amount not to exceed $5,000, twice the limit permitted under our past practice. We decline to accept petitioner's request that we adopt an individual case-by-case approach to counsel fees. Such an inquiry is time consuming, its result necessarily imprecise, and it would lead us into an area in which we have little experience. It would not be a wise expenditure of this Court's limited time and resources to deal with fee applications such as those of petitioner on an individualized basis.

We therefore grant the motion of petitioner Vivian Berger for fees in the amount of $5,000.

It is so ordered.

[498 US 237]

BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA, Petitioner

v

ROBERT L. DOWELL et al.

498 US 237, 112 L Ed 2d 715, 111 S Ct 630

[No. 89-1080]

Argued October 2, 1990. Decided January 15, 1991.

Decision: Federal Court of Appeals held to have applied overly stringent standard in determining whether to dissolve prior injunctive decree imposing desegregation plan for Oklahoma City's public schools.

SUMMARY

Several black students and their parents brought suit in 1961 in the United States District Court for the Western District of Oklahoma against the board of education of Oklahoma City, and sought to end alleged, de jure segregation of the city's public schools. In 1972, the District Court—having previously determined that the city, in violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment, had intentionally segregated both schools and housing in the past, and had been operating a "dual," racially segregated school system—(1) ruled that previous efforts had not been successful in eliminating such state-imposed segregation; and (2) ordered the adoption of a desegregation plan whose elements included (a) mandatory student assignments for many specified schools and grades, and (b) school busing (338 F Supp 1256). On appeal, the United States Court of Appeals for the Tenth Circuit affirmed (465 F2d 1012), and the United States Supreme Court denied certiorari (409 US 1041, 34 L Ed 2d 490, 93 S Ct 526). In 1977, the District Court, issuing an unpublished, unappealed "Order Terminating Case," expressed the view that (1) the desegregation plan had worked; (2) substantial compliance with the constitutional requirements had been achieved; and (3) a "unitary" school system had been accomplished. Later, the board, under allegedly changed conditions, adopted a student reassignment plan to begin in the 1985-1986 school year. Although the reassignment plan continued some busing, the plan also

Briefs of Counsel, p 1232, infra.

included provisions for (1) some neighborhood assignments, and (2) a student's voluntary transfer from a school in which the student was in the majority to a school in which the student would be in the minority. The black students and their parents then asserted that the school district had not achieved "unitary" status and that the reassignment plan was a return to segregation, but the District Court, in refusing to reopen the case, expressed the view that (1) the 1977 finding of unitariness was res judicata as to the parties, and (2) the school district remained unitary (606 F Supp 1548). On appeal, the Court of Appeals, reversing, expressed the view that while the 1977 order was binding on the parties, nothing in the 1977 order indicated that the 1972 injunction itself was terminated (795 F2d 1516). The Supreme Court again denied certiorari (479 US 938, 93 L Ed 2d 370, 107 S Ct 420). On remand, the District Court, in 1987, concluded that the 1972 decree should be vacated and the school district returned to local control, where, according to the District Court, (1) demographic changes had made the desegregation plan unworkable; (2) the board had done nothing for 25 years to promote residential segregation; (3) the school district had bused students for more than a decade in good-faith compliance with the District Court's orders; (4) the city's existing residential segregation was the result of private decisionmaking and economics, rather than a vestige of former school segregation; (5) the district had maintained its unitary status; and (6) the reassignment plan was not designed with discriminatory intent (677 F Supp 1503). On appeal, the Court of Appeals, again reversing, expressed the view that (1) a desegregation decree generally remains in effect until a school district can show a "grievous wrong" evoked by new and unforeseen conditions; and (2) the circumstances in the case at hand had not changed enough to justify modification of the 1972 decree, where, according to the Court of Appeals, a number of schools would return to being primarily one-race schools under the reassignment plan (890 F2d 1483).

On certiorari, the Supreme Court reversed the Court of Appeals' judgment and remanded the case to the District Court for further proceedings. In an opinion by Rehnquist, Ch. J., joined by White, O'Connor, Scalia, and Kennedy, JJ., it was held that (1) the District Court's unappealed 1977 order did not bar the black students and their parents from contesting the District Court's 1987 order dissolving the 1972 injunctive decree, where (a) the 1977 order did not dissolve the 1972 decree, and (b) the 1977 order's unitariness finding was too ambiguous to bar the students and their parents from challenging later action by the school board; but (2) in the case at hand, a finding by the District Court—that the school district was being operated in compliance with the commands of the Fourteenth Amendment's equal protection clause and that it was unlikely that the school board would return to its former ways—would be a finding that the purposes of the desegregation litigation had been fully achieved, and would thus be sufficient to justify dissolution of the desegregation decree, without any additional requirement for the school board to show a "grievous wrong" evoked by new and unforeseen conditions; (3) the District Court, on remand, was to decide, in accordance with the Supreme Court's opinion, whether the school board had made a sufficient showing of constitutional compliance as of 1985, when the school board had adopted the student reassignment plan, so as to allow the injunction to be dissolved; and (4) the District Court ought to address itself as to whether (a) the board had complied in good faith with the desegregation decree since it had been entered, and (b) the vestiges of past discrimination had been eliminated to the extent practicable.

Marshall, J., joined by Blackmun and Stevens, JJ., dissenting, expressed the view that (1) the District Court's 1977 order did not contain a sufficiently precise statement to bar review of the District Court's 1987 order expressly dissolving the 1972 decree; and (2) the proper standard for determining whether a school desegregation decree should be dissolved is whether the purposes of the desegregation litigation, as incorporated in the decree, have been fully achieved; but (3) such a standard must (a) take into account the unique harm associated with a system of racially identifiable schools, and (b) expressly demand the elimination of such schools; and (4) while it was possible that some modification of the 1972 decree might be appropriate, the purposes of the 1972 decree had not yet been achieved, and the Court of Appeals' reinstatement of the decree ought to be affirmed, because the record showed, and the Court of Appeals had found, that feasible steps could be taken to avoid one-race schools.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Civil Rights § 50; Injunction §§ 136, 141 — dissolution of decree — school desegregation — local control

1a-1e. With respect to a city school board's seeking dissolution of a Federal District Court's prior injunctive decree which imposed a desegrega-

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15 Am Jur 2d, Civil Rights §§ 61, 62, 64-67, 70

6 Federal Procedure, L Ed, Civil Rights §§ 11:326-11:328, 11:331

5 Federal Procedural Forms, L Ed, Civil Rights §§ 10:421-10:428, 10:433-10:435

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 51, 53; 22 Am Jur Pl & Pr Forms (Rev), Schools, Forms 191-193

USCS, Constitution, Amendment 14

US L Ed Digest, Civil Rights § 50; Injunction § 141

Index to Annotations, Discrimination; Equal Protection of Law; Injunctions; Jurisdiction; School Buses; Schools and Education; Segregation; Termination and Expiration

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views as to what constitutes appropriate relief under provisions of Federal Constitution in school desegregation cases. 53 L Ed 2d 1228.

Racial discrimination in education—Supreme Court cases. 24 L Ed 2d 765.

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or -supervised desegregation plans and the effects of such declarations. 94 ALR Fed 667.

Federal court regulation of school construction or facility so as to avoid school segregation. 4 ALR Fed 979.

Racial discrimination in the hiring, retention, and assignment of teachers—federal cases. 3 ALR Fed 325.

Relief against school board's "busing" plan to promote desegregation. 50 ALR3d 1089.

De facto segregation of races in public schools. 11 ALR3d 780.

Comment note.—Racial segregation. 38 ALR2d 1188.

tion plan for the city's schools, a finding by the District Court—that the school district is being operated in compliance with the commands of the equal protection clause of the Federal Constitution's Fourteenth Amendment and that it is unlikely that the school board would return to its former ways—is a finding that the purposes of the desegregation litigation have been fully achieved, and is thus sufficient to justify dissolution of the desegregation decree, without any additional requirement for the school board to show a "grievous wrong" evoked by new and unforeseen conditions, because (1) such desegregation decrees are not intended to operate in perpetuity; (2) local control over the education of children allows (a) citizen participation in decisionmaking, and (b) innovations so that school programs can fit local needs; (3) the legal justification for the displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities; (4) the dissolution of a desegregation decree after the authorities have operated in compliance with the decree for a reasonable period of time properly recognizes that necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems does not extend beyond the time required to remedy the effects of past intentional discrimination; (5) even though the personnel of school boards change over time, and even though the same passage of time enables a District Court to observe the good faith of a school board in complying with such a decree, the addition of such a "grievous wrong" requirement would condemn a school district, once governed by a board which intentionally discriminated, to judicial tutelage for the indefinite future; and (6) neither the principles governing the entry and dissolution of injunctive decrees nor the commands of the equal protection clause require such a draconian result. (Marshall, Blackmun, and Stevens, JJ., dissented from this holding.)

Civil Rights § 51; Injunction § 141; Judgment § 146 — school desegregation — dissolution of decree — unappealed finding of unitary status — conclusiveness

2. Even though the plaintiffs—several black students and their parents—did not appeal from a Federal District Court's 1977 order finding that a previously segregated school system had achieved "unitary" status, the 1977 order does not bar the students and their parents from contesting the District Court's 1987 order dissolving a 1972 injunctive decree which imposed a desegregation plan, where (1) the 1977 order did not dissolve the 1972 decree; (2) the 1977 order's unitariness finding was too ambiguous to bar the students and their parents from challenging later action by the defendant school board; and (3) even though courts have used the term "dual" to denote a school system which has engaged in intentional segregation of students by race, and the term "unitary" to describe a school system which has been brought into compliance with the command of the equal protection clause of the Federal Constitution's Fourteenth Amendment, (a) the words "dual" and "unitary" are not actually found in the equal protection clause, (b) the lower

courts have been inconsistent in their use of the term "unitary," (c) the 1977 order was unclear with respect to what it meant by "unitary" and the necessary result of that finding, (d) it has been held that a school board is entitled to a precise statement of its obligations under a desegregation decree, and (e) if such a decree is to be terminated or dissolved, the students and their parents, as well as the school board, are entitled to a like statement from the court.

Injunction § 142 — change

3. An injunctive decree may be changed upon an appropriate showing, but such a decree may not be changed if the purposes of the litigation, as incorporated in the decree, have not been fully achieved.

Evidence §§ 852, 904.3 — relevancy — weight — modification of school desegregation decree

4a, 4b. A Federal District Court, in deciding whether to modify or dissolve a previously entered decree for the desegregation of local public schools, need not accept at face value the profession of a school board which has intentionally discriminated that the board will cease to do so in the future, but the board's compliance with previous court orders is relevant; the District Court, in considering whether the vestiges of de jure segregation of such schools have been eliminated as far as practicable, should look at not only school assignments, but also every facet of school operations—faculty, staff, transportation, extracurricular activities, and facilities. (Marshall, Blackmun, and Stevens, JJ., dissented in part from this holding.)

Appeal §§ 1692.3, 1714, 1750 — dissolution of injunction — erroneous standard — remand to District Court — what may be considered

5a-5d. On certiorari to review a Federal Court of Appeals' reversal of a Federal District Court's 1987 decision terminating a 1972 injunctive decree imposing a desegregation plan for a particular city's public schools, the United States Supreme Court—having decided that the Court of Appeals used an overly stringent standard in reviewing such termination decisions, and having reversed the Court of Appeals' judgment—will not reinstate the District Court's decision, but will remand the case to the District Court so that the District Court may decide, in accordance with the Supreme Court's opinion, whether the defendant school board made a sufficient showing of constitutional compliance as of 1985, when the school board adopted a student reassignment plan, so as to allow the injunction to be dissolved; the District Court should address itself as to whether (1) the board had complied in good faith with the desegregation decree since it was entered, and (2) the vestiges of past discrimination had been eliminated to the extent practicable; even though the board's adoption of the reassignment plan may technically have been a violation of the 1972 decree, the District Court, on remand, should not treat the adoption of the reassignment plan as a breach of good faith on the part of the board, because the board should not be penalized for relying on the express language of the District Court's 1977 purported "Order Terminating Case," which order was later determined, by hindsight, to be ambiguous; with respect to a 1987 finding by the District Court—that present residential segregation in the city was the result of private decisionmaking and economics, and that such residential segregation was too attenuated to be a vestige of former school segregation—the District Court and the Court of Appeals must treat that residential-segregation issue as a new matter upon further consideration of the case, where the Court of Appeals' opinion was at least ambiguous as to whether the District Court's finding was clearly erroneous; after the District Court decides whether the board is entitled to have the decree terminated, the District Court should proceed to decide the challenge by the plaintiffs—several black students and their parents—to the student reassignment plan; if the board was entitled to have the 1972 decree terminated as of 1985, the District Court should then evaluate the board's decision to implement the reassignment plan under appropriate principles pursuant to the equal protection clause of the Federal Constitution's Fourteenth Amendment. (Marshall, Blackmun, and Stevens, JJ. dissented from this holding.)

Civil Rights §§ 6, 50; Injunction § 141 — school desegregation decree — release — effect

6. A local school district which has been released from an injunction imposing a desegregation plan (1) no longer requires court authorization for the promulgation of policies and rules regulating matters such as the assignment of students and the like; but (2) remains subject to the mandate of the equal protection clause of the Federal Constitution's Fourteenth Amendment.

SYLLABUS BY REPORTER OF DECISIONS

In 1972, finding that previous efforts had not been successful at eliminating de jure segregation, the District Court entered a decree imposing a school desegregation plan on petitioner Oklahoma City Board of Education (Board). In 1977, finding that the school district had achieved "unitary" status, the court issued an order terminating the case, which respondents, black students and their parents, did not appeal. In 1984, the Board adopted its Student Reassignment Plan (SRP), under which a number of previously desegregated schools would return to primarily one-race status for the asserted purpose of alleviating greater busing burdens on young black children caused by demographic changes. The District Court thereafter denied respondents' motion to reopen the terminated case, holding, inter alia, that its 1977 unitariness finding was res judicata. The Court of Appeals reversed, holding that respondents could challenge the SRP because the school district was still subject to the desegregation decree, nothing in the 1977 order having indicated that the 1972 injunction itself was terminated. On remand, the District Court dissolved the injunction, finding, among other things, that the original plan was no longer workable, that the Board had complied in good faith for more than a decade with the court's orders, and that the SRP was not designed with discriminatory intent. The Court of Appeals again reversed, holding that a desegregation decree remains in effect until a school district can show " 'grievous wrong evoked by new and unforeseen conditions,' " United

States v Swift & Co., 286 US 106, 119, 76 L Ed 999, 52 S Ct 460, and that circumstances had not changed enough to justify modification of the 1972 decree.

Held:

1. Respondents may contest the District Court's order dissolving the 1972 injunction. Although respondents did not appeal from the court's 1977 order, that order did not dissolve the desegregation decree, and, since the order is unclear with respect to what it meant by "unitary" and the necessary result of that finding, it is too ambiguous to bar respondents from challenging later action by the Board. If a desegregation decree is to be terminated or dissolved, the parties are entitled to a rather precise statement to that effect from the court.

2. The Court of Appeals' test for dissolving a desegregation decree is more stringent than is required either by this Court's decisions dealing with injunctions or by the Equal Protection Clause of the Fourteenth Amendment.

(a) Considerations based on the allocation of powers within the federal system demonstrate that the Swift test does not provide the proper standard to apply to injunctions entered in school desegregation cases. Such decrees, unlike the one in Swift, are not intended to operate in perpetuity, federal supervision of local school systems always having been intended as a temporary measure to remedy past discrimination. The legal justification for displacement of local authority in such cases is a violation of the Constitution, and dissolution of a desegregation decree after local authorities have operated in compliance with it for a reasonable period is proper. Thus, in this case, a finding by the District Court that the school system was being operated in compliance with the Equal Protection Clause, and that it was unlikely that the Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved, and no additional showing of "grievous wrong evoked by new and unforeseen conditions" would be required of the Board.

(b) The Court of Appeals also erred in relying on United States v W. T. Grant Co., 345 US 629, 633, 97 L Ed 1303, 73 S Ct 894, for the proposition that "compliance alone cannot become the basis for modifying or dissolving an injunction." That case did not involve the dissolution of an injunction, but the question whether an injunction should be issued in the first place in light of the wrongdoer's promise to comply with the law. Although a district court need not accept at face value a school board's profession that it will cease to intentionally discriminate in the future, the board's compliance with previous court orders is obviously relevant in deciding whether to modify or dissolve a desegregation decree, since the passage of time results in changes in board personnel and enables the court to observe the board's good faith in complying with the decree. The Court of Appeals' test would improperly condemn a school district to judicial tutelage for the indefinite future.

(c) In deciding whether the Board made a sufficient showing of constitutional compliance as of 1985, when the SRP was adopted, to allow the injunction to be dissolved, the District Court, on remand, should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether, in light of every facet of school operations, the vestiges of past de jure segregation had been eliminated to the extent practicable. If it decides that the Board was entitled to have the decree terminated, the court should proceed to decide whether the Board's decision to implement the SRP complies with appropriate equal protection principles.

890 F2d 1483, reversed and remanded.

Rehnquist, C.J., delivered the opinion of the Court, in which White, O'Connor, Scalia, and Kennedy, JJ., joined. Marshall, J., filed a dissenting opinion, in which Blackmun and Stevens, JJ., joined. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Ronald L. Day argued the cause for petitioner.

Solicitor General **Kenneth W. Starr** argued the cause for the United States, as amicus curiae, in support of petitioner, by special leave of court.

Julius L. Chambers argued the cause for respondents.

Briefs of Counsel, p 1232, infra.

OPINION OF THE COURT

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Chief Justice **Rehnquist** delivered the opinion of the Court.

[1a] Petitioner Board of Education of Oklahoma City (Board) sought dissolution of a decree entered by the District Court imposing a school desegregation plan. The District Court granted relief over the objection of respondents Robert L. Dowell, et al., black students and their parents. The Court of Appeals for the Tenth Circuit reversed, holding that the Board would be entitled to such relief only upon " '[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions . . . .' " 890 F2d 1483, 1490 (1989) (citation omitted). We hold that the Court of Appeals' test is more stringent than is required either by our cases dealing with injunctions or by the Equal Protection Clause of the Fourteenth Amendment.

I

This school desegregation litigation began almost 30 years ago. In 1961, respondents, black students and their parents, sued the Board to end de jure segregation in the public schools. In 1963, the District Court found that Oklahoma City had intentionally segregated both schools and housing in the past, and that Oklahoma City was operating a "dual" school system—one that was intentionally segregated by race. Dowell v School Board of Oklahoma City Public Schools, 219 F Supp 427 (WD Okla). In 1965, the District Court found that the Board's attempt to desegregate by using neighborhood zoning failed to remedy past segregation because residential segregation resulted in one-race schools. Dowell v School Board of Oklahoma City Public Schools, 244 F Supp 971, 975 (WD Okla). Residential segregation had once been state imposed, and it lingered due to discrimination by some realtors and financial institutions. Ibid. The District Court found that school segregation had caused

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some housing segregation. Id., at 976-977. In 1972, finding that previous efforts had not been successful at eliminating state-imposed segregation, the District Court ordered the Board to adopt the "Finger Plan," Dowell v Board of Education of Oklahoma City Public Schools, 388 F Supp 1256, aff'd, 465 F2d 1012 (CA10), cert denied, 409 US 1041, 34 L Ed 2d 490, 93 S Ct 526 (1972), under which kindergarteners would be assigned to neighborhood schools unless their parents opted otherwise; children in grades 1-4 would attend formerly all-white schools, and thus black children would be bused to those schools; children in grade 5 would attend formerly all black schools, and thus white children would be bused to those schools; students in the upper grades would be bused to various areas in order to maintain integrated schools; and in integrated neighborhoods there would be stand-alone schools for all grades.

In 1977, after complying with the desegregation decree for five years, the Board made a "Motion to Close Case." The District Court held in its "Order Terminating Case":

> "The Court has concluded that [the Finger Plan] worked and that substantial compliance with the constitutional requirements has been achieved. The School Board, under the oversight of the Court, has operated the Plan properly, and the Court does not foresee that the termination of its jurisdiction will result in the dismantlement of the Plan or any affirmative action by the defendant to undermine the unitary system so slowly and painfully accomplished over the 16 years during which the cause has been pending before the court. . . .
>
> ". . . The School Board, as now constituted, has manifested the desire and intent to follow the law. The court believes that the present members and their successors on the Board will now and in the future continue to follow the constitutional desegregation requirements.
>
> "Now sensitized to the constitutional implications of its conduct and with a new awareness of its responsibility
>
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>
> to citizens of all races, the Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court. . . .
>
> . . . . .
>
> ". . . Jurisdiction in this case is terminated ipso facto subject only to final disposition of any case now pending on appeal." No. Civ-9452 (WD Okla, Jan. 18, 1977); App 174-176.

This unpublished order was not appealed.

In 1984, the Board faced demographic changes that led to greater burdens on young black children. As more and more neighborhoods became integrated, more stand-alone schools were established, and young black students had to be bused further from their inner-city homes to outlying white areas. In an effort to alleviate this burden and to increase parental involvement, the Board adopted the Student Reassignment Plan (SRP), which relied on neighborhood assignments for students in grades K-4 beginning in the 1985-1986 school year. Busing continued for students in grades 5-12.

Any student could transfer from a school where he or she was in the majority to a school where he or she would be in the minority. Faculty and staff integration was retained, and an "equity officer" was appointed.

In 1985, respondents filed a "Motion to Reopen the Case," contending that the school district had not achieved "unitary" status, and that the SRP was a return to segregation. Under the SRP, 11 of 64 elementary schools would be greater than 90% black, 22 would be greater than 90% white plus other minorities, and 31 would be racially mixed. The District Court refused to reopen the case, holding that its 1977 finding of unitariness was res judicata as to those who were then parties to the action, and that the district remained unitary. Dowell v Board of Education of Oklahoma City Public Schools, 606 F Supp 1548 (WD Okla 1985). The District Court found that the Board, administration, faculty, support staff, and student body were integrated, and transportation,

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extracurricular activities and facilities within the district were equal and nondiscriminatory. Because unitariness had been achieved, the District Court concluded that court-ordered desegregation must end.

The Court of Appeals for the Tenth Circuit reversed, Dowell v Board of Education of Oklahoma City Public Schools, 795 F2d 1516, cert denied, 479 US 938, 93 L Ed 2d 370, 107 S Ct 420 (1986). It held that, while the 1977 order finding the district unitary was binding on the parties, nothing in that order indicated that the 1972 injunction itself was terminated. The court reasoned that the finding that the system was unitary merely ended the District Court's active supervision of the case, and because the school district was still subject to the desegregation decree, respondents could challenge the SRP. The case was remanded to determine whether the decree should be lifted or modified.

On remand, the District Court found that demographic changes made the Finger Plan unworkable, that the Board had done nothing for 25 years to promote residential segregation, and that the school district had bused students for more than a decade in good-faith compliance with the court's orders. 677 F Supp 1503 (WD Okla 1987). The District Court found that present residential segregation was the result of private decisionmaking and economics, and that it was too attenuated to be a vestige of former school segregation. It also found that the district had maintained its unitary status, and that the neighborhood assignment plan was not designed with discriminatory intent. The court concluded that the previous injunctive decree should be vacated and the school district returned to local control.

The Court of Appeals again reversed, 890 F2d 1483 (CA10 1989), holding that "'an injunction takes on a life of its own and becomes an edict quite independent of the law it is meant to effectuate.'" Id., at 1490 (citation omitted). That court approached the case "not so much as one dealing with desegregation, but as one dealing with the proper application

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of the federal law on injunctive remedies." Id., at 1486. Relying on United States v Swift & Co. 286 US 106, 76 L Ed 999, 52 S Ct 460 (1932), it held that a desegregation decree remains in effect until a school district can show "grievous wrong evoked by new and unforeseen conditions," id., at 119, 76 L Ed 999, 52 S Ct 460 and " 'dramatic changes in conditions unforeseen at the time of the decree that . . . impose extreme and unexpectedly oppressive hardships on the obligor.' " 890 F2d, at 1490 (quoting Jost, From Swift to Stotts and Beyond: Modification of Injunctions in the Federal Courts, 64 Texas L Rev 1101, 1110 (1986)). Given that a number of schools would return to being primarily one-race schools under the SRP, circumstances in Oklahoma City had not changed enough to justify modification of the decree. The Court of Appeals held that, despite the unitary finding, the Board had the " 'affirmative duty . . . not to take any action that would impede the process of disestablishing the dual system and its effects.' " 890 F2d, at 1504 (quoting Dayton Bd. of Education v Brinkman, 443 US 526, 538, 61 L Ed 2d 720, 99 S Ct 2971 (1979)).

We granted the Board's petition for certiorari, 494 US 1055, 108 L Ed 2d 761, 110 S Ct 1521 (1990), to resolve a conflict between the standard laid down by the Court of Appeals in this case and that laid down in Spangler v Pasadena Board of Education, 611 F2d 1239 (CA9 1979), and Riddick v School Bd. of Norfolk, 784 F2d 521 (CA4 1986). We now reverse the Court of Appeals.

II

[2] We must first consider whether respondents may contest the District Court's 1987 order dissolving the injunction which had imposed the desegregation decree. Respondents did not appeal from the District Court's 1977 order finding that the school system had achieved unitary status, and petitioners contend that the 1977 order bars respondents from contesting the 1987 order. We disagree, for the 1977 order did not dissolve the desegregation decree, and the District

Court's unitariness finding was too ambiguous to bar respondents from challenging later action by the Board.

The lower courts have been inconsistent in their use of the term "unitary." Some have used it to identify a school district that has completely remedied all vestiges of past discrimination. See, e. g., United States v Overton, 834 F2d 1171, 1175 (CA5 1987); Riddick v School Bd. of Norfolk, supra, at 533-534; Vaughns v Board of Education of Prince George's Cty. 758 F2d 983, 988 (CA4 1985). Under that interpretation of the word, a unitary school district is one that has met the mandate of Brown v Board of Education, 349 US 294, 99 L Ed 1083, 75 S Ct 753 (1955), and Green v New Kent County School Bd., 391 US 430, 20 L Ed 2d 716, 88 S Ct 1689 (1968). Other courts, however, have used "unitary" to describe any school district that has currently desegregated student assignments, whether or not that status is solely the result of a court-imposed desegregation plan. See, e. g., 890 F2d, at 1492, 1499 (case below). In other words, such a school district could be called unitary and nevertheless still contain vestiges of past discrimination. That there is such confusion is evident in Georgia State Conference of Branches of NAACP v Georgia, 775 F2d 1403 (CA11 1985), where the Court of Appeals drew a distinction between a "unitary school district" and a district that has achieved "unitary status." The court explained that a school district that has not operated segregated schools as proscribed by Green v New Kent County School Bd., supra, and Swann v Charlotte-Mecklenburg Bd. of Education, 402 US 1, 28 L Ed 2d 554, 91 S Ct 1267 (1971), "for a period of several years" is unitary, but that a school district cannot be said to have achieved "unitary status" unless it "has eliminated the vestiges of its prior discrimination and has been adjudicated as such through the proper judicial procedures." Georgia State Conference, supra, at 1413, n 12.

We think it is a mistake to treat words such as "dual" and "unitary" as if they were actually found in the Constitution. The constitutional command of the Fourteenth Amendment

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is that "[n]o State shall . . . deny to any person . . . the equal protection of the laws." Courts have used the terms "dual" to denote a school system which has engaged in intentional segregation of students by race, and "unitary" to describe a school system which has been brought into compliance with the command of the Constitution. We are not sure how useful it is to define these terms more precisely, or to create subclasses within them. But there is no doubt that the differences in usage described above do exist. The District Court's 1977 order is unclear with respect to what it meant by unitary and the necessary result of that finding. We therefore decline to overturn the conclusion of the Court of Appeals that while the 1977 order of the District Court did bind the parties as to the unitary character of the district, it did not finally terminate the Oklahoma City school litigation. In Pasadena City Bd. of Education v Spangler, 427 US 424, 49 L Ed 2d 599, 96 S Ct 2697 (1976), we held that a school board is entitled to a rather precise statement of its obligations under a desegregation decree. If such a decree is to be terminated or dissolved, respondents as well as the school board are entitled to a like statement from the court.

III

[1b] The Court of Appeals, 890 F2d, at 1490, relied upon language from this Court's decision in United States v Swift and Co., supra, for the proposition that a desegregation decree could not be lifted or modified absent a showing of "'grievous wrong evoked by new and unforeseen conditions.'" Id., at 119, 76 L Ed 999, 52 S Ct 460. It also held that "compliance alone cannot become the basis for modifying or dissolving an injunction," 890 F2d, at 1491, relying on United States v W. T. Grant Co. 345 US 629, 633, 97 L Ed 1303, 73 S Ct 894 (1953). We hold that its reliance was mistaken.

In Swift, several large meatpacking companies entered into a consent decree whereby they agreed to refrain forever from entering into the grocery business. The decree was by its terms effective in perpetuity. The defendant

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meatpackers and their allies had over a period of a decade attempted, often with success in the lower courts, to frustrate operation of the decree. It was in this context that the language relied upon by the Court of Appeals in this case was used.

[1c, 3] United States v United Shoe Machinery Corp. 391 US 244, 20 L Ed 2d 562, 88 S Ct 1496 (1968), explained that the language used in Swift must be read in the context of the continuing danger of unlawful restraints on trade which the Court had found still existed. Id., at 248, 20 L Ed 2d 562, 88 S Ct 1496. "Swift teaches . . . a decree may be changed upon an appropriate showing, and it holds that it may not be changed . . . if the purposes of the litigation as incorporated in the decree . . . have not been fully achieved." Ibid. (emphasis deleted). In the present case, a finding by the District Court that the Oklahoma City School District was being operated in compliance with the commands of the Equal Protection Clause of the Fourteenth Amendment, and that it was unlikely that the Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved. No additional showing of "grievous wrong evoked by new and unforeseen conditions" is required of the Board.

In Milliken v Bradley (Milliken II), 433 US 267, 53 L Ed 2d 745, 97 S Ct 2749 (1977), we said:

> "[F]ederal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . . ." Id., at 282, 53 L Ed 2d 745, 97 S Ct 2749.

From the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination. Brown considered the "complexities arising from the *transition* to a system of public education freed of racial discrimination" in holding that the implementation of

desegregation was to proceed "with all deliberate speed." 349 US, at 299-301, 99 L Ed 1083, 75 S Ct 753 (emphasis added). Green also spoke of the "*transition* to a unitary, nonracial system of public education." 391 US, at 436, 20 L Ed 2d 716, 88 S Ct 1689 (emphasis added).

[1d] Considerations based on the allocation of powers within our federal system, we think, support our view that the quoted language from Swift does not provide the proper standard to apply to injunctions entered in school desegregation cases. Such decrees, unlike the one in Swift, are not intended to operate in perpetuity. Local control over the education of children allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs. Milliken v Bradley (Milliken I), 418 US 717, 742, 41 L Ed 2d 1069, 94 S Ct 3112 (1974); San Antonio Independent School District v Rodriguez, 411 US 1, 50, 36 L Ed 2d 16, 93 S Ct 1278 (1973). The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities. Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination. See [Milliken II], 433 US, at 280-82 [53 L Ed 2d 745, 97 S Ct 2749]."

Spangler v Pasadena City Bd. of Education, 611 F2d, at 1245, n 5 (Kennedy, J., concurring).

The Court of Appeals, as noted, relied for its statement that "compliance alone cannot become the basis for modifying or dissolving an injunction" on our decision in United States v W. T. Grant Co., supra, at 633, 97 L Ed 1303, 73 S Ct 894. That case, however, did not involve the dissolution of an injunction, but the question whether an injunction should be issued in the first place. This Court observed that a promise to comply with the law on the part of a wrongdoer did not divest a district court of its

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power to enjoin the wrongful conduct in which the defendant had previously engaged.

[1e, 4a] A district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future. But in deciding whether to modify or dissolve a desegregation decree, a school board's compliance with previous court orders is obviously relevant. In this case the original finding of de jure segregation was entered in 1963, the injunctive decree from which the Board seeks relief was entered in 1972, and the Board complied with the decree in good faith until 1985. Not only do the personnel of school boards change over time, but the same passage of time enables the district court to observe the good faith of the school board in complying with the decree. The test espoused by the Court of Appeals would condemn a school district, once governed by a board which intentionally discriminated, to judicial tutelage for the indefinite future. Neither the principles governing the entry and dissolution of injunctive decrees, nor the commands of the Equal Protection Clause of the Fourteenth Amendment, require any such Draconian result.

[5a] Petitioners urge that we reinstate the decision of the District Court terminating the injunction, but we think that the preferable course is to remand the case to that court so that it may decide, in accordance with this opinion, whether the Board made a sufficient showing of constitutional compliance as of 1985, when the SRP was adopted, to allow the injunction to be dissolved.[1] The District Court should address itself to whether the Board had complied in good faith with the

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desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable.[2]

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[1] **[5b]** The Court of Appeals viewed the Board's adoption of the SRP as a violation of its obligation under the injunction, and technically it may well have been. But just as the Court of Appeals held that respondents should not be penalized for failure to appeal from an order that by hindsight was ambiguous, we do not think that the Board should be penalized for relying on the express language of that order. The District Court in its decision on remand should not treat the adoption of the SRP as a breach of good faith on the part of the Board.

[2] **[5c]** As noted above, the District Court earlier found that present residential segregation in Oklahoma City was the result of private decisionmaking and economics, and that it was too attenuated to be a vestige of former school segregation. Respondents contend that the Court of Appeals held that this finding was clearly erroneous, but we think its opinion is at least ambiguous on this point. The only operative use of "clearly erroneous" language is in the final paragraph of Subpart VI-D of its opinion, and it is perfectly plausible to read the clearly-erroneous findings as dealing only with the issues considered in that

[4b] In considering whether the vestiges of de jure segregation had been eliminated as far as practicable, the District Court should look not only at student assignments, but "to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." Green, 391 US, at 435, 20 L Ed 2d 716, 88 S Ct 1689. See also Swann, 402 US, at 18, 28 L Ed 2d 554, 91 S Ct 1267 ("[E]xisting policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities" are "among the most important indicia of a segregated system").

[5d, 6] After the District Court decides whether the Board was entitled to have the decree terminated, it should proceed to decide respondents' challenge to the SRP. A school district which has been released from an injunction imposing a desegregation plan no longer requires court authorization for the promulgation of policies and rules regulating matters such as assignment of students and the like, but it of course remains subject to the mandate of the Equal Protection Clause of the Fourteenth Amendment. If the Board was entitled to have the decree terminated as of 1985, the District Court should then evaluate the Board's decision to implement the SRP under appropriate equal protection principles. See Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040 (1976); Arlington Heights v

Metropolitan Housing Development Corp. 429 US 252, 50 L Ed 2d 450, 97 S Ct 555 (1977).

The judgment of the Court of Appeals is reversed, and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINION

Justice **Marshall,** with whom Justice **Blackmun** and Justice **Stevens** join, dissenting.

Oklahoma gained statehood in 1907. For the next 65 years, the Oklahoma City School Board (Board) maintained segregated schools—initially relying on laws requiring dual school systems; thereafter, by exploiting residential segregation that had been created by legally enforced restrictive covenants. In 1972—18 years after this Court first found segregated schools unconstitutional—a federal court finally interrupted this cycle, enjoining the Board to implement a specific plan for achieving actual desegregation of its schools.

The practical question now before us is whether, 13 years after that injunction was imposed, the same Board should have been allowed to return many of its elementary schools to their former one-race status. The majority today suggests that 13 years of desegregation was enough. The Court remands the case for further evaluation of whether the purposes of the injunctive decree

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part of the opinion. To dispel any doubt, we direct the District Court and the Court of Appeals to treat this question as res nova upon further consideration of the case.

were achieved sufficient to justify the decree's dissolution. However, the inquiry it commends to the District Court fails to recognize explicitly the threatened reemergence of one-race schools as a relevant "vestige" of de jure segregation.

In my view, the standard for dissolution of a school desegregation decree must reflect the central aim of our school desegregation precedents. In Brown v Board of Education, 347 US 483, 98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180 (1954) (Brown I), a unanimous Court declared that racially "[s]eparate educational facilities are inherently

unequal." Id., at 495, 98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180. This holding rested on the Court's recognition that state-sponsored segregation conveys a message of "inferiority as to th[e] status [of Afro-American school children] in the community that may affect their hearts and minds in a way unlikely ever to be undone." Id., at 494, 98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180. Remedying this evil and preventing its recurrence were the motivations animating our requirement that formerly de jure segregated school districts take all feasible steps to *eliminate* racially identifiable schools. See Green v New Kent County School Bd., 391 US 430, 442, 20 L Ed 2d 716, 88 S Ct 1689 (1968); Swann v Charlotte-Mecklenburg Bd. of Education, 402 US 1, 25-26, 28 L Ed 2d 554, 91 S Ct 1267 (1971).

I believe a desegregation decree cannot be lifted so long as conditions likely to inflict the stigmatic injury condemned in Brown I persist and there remain feasible methods of eliminating such conditions. Because the record here shows, and the Court of Appeals found, that feasible steps could be taken to avoid one-race schools, it is clear that the purposes of the decree have not yet been achieved and the Court of Appeals' reinstatement of the decree should be affirmed. I therefore dissent.[1]

I

In order to assess the full consequence of lifting the decree at issue in this case, it is necessary to explore more fully than does the majority the history of racial segregation in the Oklahoma City schools. This history reveals nearly unflagging resistance by the Board to judicial efforts to dismantle the city's dual education system.

When Oklahoma was admitted to the Union in 1907, its Constitution mandated separation of Afro-American children

from all other races in the public school system. Dowell v School Bd. of Oklahoma City Public Schools, 219 F Supp 427, 431 (WD Okla 1963). In addition to laws enforcing segregation in the schools, racially restrictive covenants, supported by state and local law, established a segregated residential pattern in Oklahoma City. 677 F Supp 1503, 1506 (WD Okla 1987). Petitioner Board exploited this residential segregation to enforce school segregation, locating "all-Negro" schools in the heart of the city's northeast quadrant, in which the majority of the city's Afro-American citizens resided. Dowell, supra, at 433-434.

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[1] The issue of decree *modification* is not before us. However, I would not rule out the possibility of petitioner demonstrating that the purpose of the decree at issue could be realized by less burdensome means. Under such circumstances a modification affording petitioner more flexibility in redressing the lingering effects of past segregation would be warranted. See infra, at 268, 112 L Ed 2d, at 741.

Matters did not change in Oklahoma City after this Court's decision in Brown I and Brown v Board of Education, 349 US 294, 99 L Ed 1083, 75 S Ct 753 (1955) (Brown II). Although new school boundaries were established at that time, the Board also adopted a resolution allowing children to continue in the schools in which they were placed or to submit transfer requests that would be considered on a case-by-case basis. Dowell, 219 F Supp, at 434. Because it allowed thousands of white children each year to transfer to schools in which their race was the majority, this transfer policy undermined any potential desegregation. See id., at 440-441, 446.

Parents of Afro-American children relegated to schools in the northeast quadrant filed suit against the Board in 1961. Finding that the Board's special transfer policy was "designed to perpetuate and encourage segregation," id., at 441, the District Court struck down the policy as a violation of the Equal Protection Clause, id., at 442. Undeterred, the Board proceeded to adopt another special transfer policy which, as the District Court found in 1965, had virtually the same effect as the prior policy—"perpetuat[ion] [of] a segregated system." Dowell v School Bd. of Oklahoma City Public Schools, 244 F Supp 971, 975 (WD Okla 1965), aff'd in part, 375 F2d 158 (CA10), cert denied, 387 US 931, 18 L Ed 2d 993, 87 S Ct 2054 (1967).

The District Court also noted that, by failing to adopt an affirmative policy of desegregation, the Board had reversed the desegregation process in certain respects. For example, eight of the nine new schools planned or under construction in 1965 were located to serve all-white or virtually all-white school zones. 244 F Supp, at 975. Rather than promote integration through new school locations, the District Court found that the Board destroyed some integrated neighborhoods and schools by adopting inflexible neighborhood school attendance zones that encouraged whites to migrate to all-white areas. Id., at 976-977. Because the Board's pupil assignments coincided with residential segregation initiated by law in Oklahoma City, the Board also preserved and augmented existing residential segregation. Ibid.

Thus, by 1972, 11 years after the plaintiffs had filed suit and 18 years after our decision in Brown I, the Board continued to resist integration and in some respects the Board had worsened the situation. Four years after this Court's admonition to formerly de jure segregated school districts to come forward with realistic plans for *immediate* relief, see Green v New Kent County School Bd., supra, at 439, 20 L Ed 2d 716, 88 S Ct 1689, the Board still had offered no meaningful plan of its own. Instead, "[i]t rationalize[d] its intransigence on the constitutionally unsound basis that public opinion [was] opposed to any further desegregation." Dowell v Board of Education of Oklahoma City Public Schools, 338 F Supp 1256, 1270 (WD Okla), aff'd, 465 F2d 1012 (CA10), cert denied, 409 US 1041, 34 L Ed 2d 490, 93 S Ct 526 (1972). The District Court concluded: "This litigation has been frustratingly interminable, not because of insuperable difficulties of implementation of the commands of the Supreme Court . . . and the Constitution . . . but because of the unpardonable recalcitrance of the . . . Board." 338 F Supp, at 1271. Consequently, the District Court ordered the Board to implement the only available plan that exhibited the promise of achieving actual desegregation—the "Finger Plan" offered by the plaintiffs. Id., at 1269.

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In 1975, after a mere three years of operating under the Finger Plan, the Board filed a "Motion to Close Case," arguing that it had " 'eliminated all vestiges of state imposed racial discrimination in its school system.' " Dowell v Board of Education of Oklahoma City Public Schools, 606 F Supp 1548, 1551 (WD Okla 1985) (quoting motion), rev'd, 795 F2d 1516 (CA10), cert denied, 479 US 938, 93 L Ed 2d 370, 107 S Ct 420 (1986). In 1977, the District Court granted the Board's motion and issued an "Order Terminating Case." The court concluded that the Board had "operated the [Finger] Plan properly" and stated that it did not "foresee that the termination of . . . jurisdiction will result in the dismantlement of the [Finger] Plan or any affirmative action by the defendant to undermine the unitary system." App 174-175. The order ended the District Court's active supervision of the school district but did not dissolve the injunctive decree. The plaintiffs did not appeal this order.

The Board continued to operate under the Finger Plan until 1985, when it implemented the Student Reassignment Plan (SRP). The SRP superimposed attendance zones over some residentially segregated areas. As a result, considerable racial imbalance reemerged in 33 of 64 elementary schools in the Oklahoma City system with student bodies either greater than 90% Afro-American or greater than 90% non-Afro-American. Dowell, 606 F Supp, at 1553. More specifically, 11 of the schools ranged from 96.9% to 99.7% Afro-American, and approximately 44% of all Afro-American children in grades K-4 were assigned to these virtually all-Afro-American schools. See 890 F2d 1483, 1510, n 4. (CA10 1989) (Baldock, J., dissenting).[2]

In response to the SRP, the plaintiffs moved to reopen the case. Ultimately, the District Court dissolved the desegregation

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decree, finding that the school district had been "unitary" since 1977 and that the racial imbalances under the SRP were the consequence of residential segregation arising from "personal preferences." 677 F Supp, at 1512. The Court of Appeals reversed, finding that the Board had not met its burden to establish that "the condition the [decree] sought to alleviate, a constitutional violation, has been eradicated." 890 F2d, at 1491.

II

I agree with the majority that the proper standard for determining whether a school desegregation decree should be dissolved is whether the purposes of the desegregation litigation, as incorporated in the decree, have been fully achieved. Ante, at 247, 112 L Ed 2d, at 728, citing United States v Swift & Co., 286 US 106, 76 L Ed 999, 52 S Ct 460 (1932). See United States v United Shoe Machinery Corp., 391 US 244, 248, 20 L Ed 2d 562, 88 S Ct 1496 (1968); Pasadena City Bd. of Education v Spangler, 427 US 424, 436-437, 49 L Ed 2d 599, 96 S Ct 2697 (1976); id., at 444, 49 L Ed 2d 599, 96 S Ct 2697 (Marshall J., dissenting) ("We should not compel the District Court to modify its order unless conditions have changed so much that 'dangers, once substantial, have become attenuated to a shadow,' " quoting, Swift, supra, at 119, 76 L Ed 999, 52 S Ct 460).[3] I strongly disagree with the majority, however, on what must be shown to demonstrate that a decree's purposes

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[2] As a result of school closings, currently there are 10 all-Afro-American elementary schools in the system, 890 F2d, at 1512, n 7 (Baldock J, dissenting). According to respondents, all but one of these schools are located in the northeast quadrant. Brief for Respondents 17.

have been fully realized.[4] In my view, a standard for dissolution of a desegregation decree must take into account the unique harm associated with a system of racially identifiable schools and must expressly demand the elimination of such schools.

A

Our pointed focus in Brown I upon the stigmatic injury caused by segregated schools explains our unflagging insistence that formerly de jure segregated schools districts extinguish all vestiges of school segregation. The concept of stigma also gives us guidance as to what conditions must be eliminated before a decree can be deemed to have served its purpose.

In the decisions leading up to Brown I, the Court had attempted to curtail the ugly legacy of Plessy v Ferguson, 163 US 537, 41 L Ed 256, 16 S Ct 1138 (1896), by insisting on a searching inquiry into whether "separate" Afro-American schools were genuinely "equal" to white schools in terms of physical facilities, curricula, quality of the faculty, and certain "intangible" considerations. See, e.g., Sweatt v Painter, 339 US 629, 94 L Ed 1114, 70 S Ct 848 (1950); Sipuel v Board of Regents of Univ. of Okla., 332 US 631, 92 L Ed 247, 68 S Ct 299 (1948). In Brown I, the Court finally liberated the Equal Protection Clause from the doctrinal tethers of Plessy, declaring that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 US, at 495, 98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180.

The Court based this conclusion on its recognition of the particular social harm that racially segregated schools inflict on Afro-American children.

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[3] I also strongly agree with the majority's conclusion that, prior to the dissolution of a school desegregation decree, plaintiffs are entitled to a precise statement from a district court. Ante, at 246, 112 L Ed 2d, at 727. Because of the sheer importance of a desegregation decree's objectives, and because the dissolution of such a decree will mean that plaintiffs will have to mount a new constitutional challenge if they wish to contest the segregative effects of the school board's subsequent actions, the district court must give a detailed explanation of how the standards for dissolution have been met. Because the District Court's 1977 order terminating its "active jurisdiction" did not contain such a statement, that order does not bar review of its 1987 order expressly dissolving the decree.

[4] Perhaps because of its preoccupation with overturning the Court of Appeals' invocation of the "grievous wrong" language from United States v Swift, 286 US 106, 76 L Ed 999, 52 S Ct 460 (1932), see ante, at 243-244, 112 L Ed 2d, at 725-726, the majority's conception of the purposes of a desegregation decree is not entirely clear. See infra, at 263-264, 112 L Ed 2d, at 738–739.

> "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:
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> " 'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.' " Id., at 494, 98 L Ed 873, 74 S Ct 686, 38 ALR2d 1180.

Remedying and avoiding the recurrence of this stigmatizing injury have been the guiding objectives of this Court's desegregation jurisprudence ever since. These concerns inform the standard by which the Court determines the effectiveness of a proposed desegregation remedy. See Green v New Kent County School Bd., 391 US 430, 20 L Ed 2d 716, 88 S Ct 1689 (1968). In Green, a school board sought to implement the mandate of Brown I and Brown II by adopting a "freedom of choice" plan under which individual students could specify which of two local schools they would attend. The Court held that this plan was inadequate because it failed to redress the effect of segregation upon "every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." 391 US, at 435, 20 L Ed 2d 716, 88 S Ct 1689. By so construing the extent of a school board's obligations, the Court made clear that the Equal Protection Clause demands elimination of every indicium of a "[r]acial[ly] identifi[able]" school system that will inflict the stigmatizing injury that Brown I sought to cure. Ibid.

Accord, Swann v Charlotte-Mecklenburg Bd. of Education, 402 US, at 15, 28 L Ed 2d 554, 91 S Ct 1267.

Concern with stigmatic injury also explains the Court's requirement that a formerly de jure segregated school district provide its victims with "make whole" relief. In Milliken v Bradley, 418 US 717, 41 L Ed 2d 1069, 94 S Ct 3112 (1974) (Milliken I), the court concluded that a school desegregation decree must "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." Id., at 746, 41 L Ed 2d 1069, 94 S Ct 3112. In order to achieve such "make whole" relief, school systems must redress any *effects* traceable to former de jure segregation. See Milliken v Bradley, 433 US 267, 281-288, 53 L Ed 2d 745, 97 S Ct 2749 (1977) (Milliken II) (upholding remedial education programs and other measures to redress the substandard communication skills of Afro-American students formerly placed in segregated schools). The remedial education upheld in Milliken II was needed to help prevent the stamp of inferiority placed upon Afro-American children from becoming a self-perpetuating phenomenon. See id., at 287, 53 L Ed 2d 745, 97 S Ct 2749.

Similarly, avoiding reemergence of the harm condemned in Brown I accounts for the Court's insistence on remedies that ensure lasting integration of formerly segregated systems. Such school districts are required to "make every effort to achieve the *greatest possible degree of actual desegregation* and [to] be concerned with the elimination of one-race schools." Swann, supra, at 26, 28 L Ed 2d 554, 91 S Ct 1267 (emphasis added). See Dayton Bd. of Education v Brinkman, 443 US 526, 538, 61 L Ed 2d 720, 99 S Ct 2971 (1979); Columbus Bd. of Education v Penick, 443 US 449, 460, 61 L Ed 2d 666, 99 S Ct 2941 (1979); Raney v Board of Education of Gould School Dist., 391 US 443, 449, 20 L Ed 2d 727, 88 S Ct 1697 (1968) (endorsing the " 'goal of a desegregated, nonracially operated school system [that] is rapidly and *finally* achieved,' " quoting Kelley v Altheimer, 378 F2d 483, 489 (CA8 1967) (emphasis added)). This focus on "achieving and *preserving* an integrated school system," Keyes v School Dist. No. 1, Denver, Colo., 413 US 189, 251, n 31, 37 L Ed 2d 548, 93 S Ct 2686 (1973) (Powell, J., concurring in part and dissenting

in part) (emphasis added), stems from the recognition that the reemergence of racial separation in such schools may revive the message of racial inferiority implicit in the former policy of state-enforced segregation.[5]

Just as it is central to the standard for evaluating the formation of a desegregation decree, so should the stigmatic injury associated with segregated schools be central to the standard for dissolving a decree. The Court has indicated that "the ultimate end to be brought about" by a desegregation remedy is "a unitary, nonracial system of public education." Green, supra, at 436, 20 L Ed 2d 716, 88 S Ct 1689. We have suggested that this aim is realized once school officials have "eliminate[d] from the public schools *all* vestiges of state-imposed segregation," Swann, supra, at 15, 28 L Ed 2d 554, 91 S Ct 1267 (emphasis added), whether they inhere in the school's "faculty, staff, transportation, extracurricular activities and facilities," Green, supra, at 435, 20 L Ed 2d 716, 88 S Ct 1689, or even in "the community and administration['s] attitudes toward [a] school," Keyes, supra, at 196, 37 L Ed 2d 548, 93 S Ct 2686. Although the Court has never explicitly defined what constitutes a "vestige" of state-enforced segregation, the function that this concept has performed

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[5] Because of the relative indifference of school boards toward all-Afro-American schools, many of these schools continue to suffer from high student-faculty ratios, lower quality teachers, inferior facilities and physical conditions, and lower quality course offerings and extracurricular programs. See Note, 87 Colum L Rev 794, 801 (1987); see also Camp, Thompson, & Crain, Within-District Equity: Desegregation and Microeconomic Analysis, in The Impacts of Litigation and Legislation on Public School Finance 273, 282-286 (J. Underwood & D. Verstegen eds 1990) (citing recent studies indicating that because of systematic biases, predominately minority public schools typically receive fewer resources than other schools in the same district).

Indeed, the poor quality of a system's schools may be so severe that nothing short of a radical transformation of the schools within the system will suffice to achieve desegregation and eliminate all of its vestiges. See Jenkins v Missouri, 855 F2d 1295, 1301-1307 (CA8 1988), aff'd in part and rev'd in part on other grounds, 495 US 33, 109 L Ed 2d 31, 110 S Ct 1651 (1990) (desegregation plan required every high school, every middle school, and half of the elementary schools in the school system to become magnet schools).

in our jurisprudence suggests that it extends to any condition that is likely to convey the message of inferiority implicit in a policy of segregation. So long as such conditions persist, the purposes of the decree cannot be deemed to have been achieved.

B

The majority suggests a more vague and, I fear, milder standard. Ignoring the harm identified in Brown I, the majority asserts that the District Court should find that the purposes of the degree have been achieved so long as "the Oklahoma City School District [is now] being operated in compliance with the commands of the Equal Protection Clause" and "it [is] unlikely that the school board would return to its former ways." Ante, at 247, 112 L Ed 2d, at 728. Insofar as the majority instructs the District Court, on remand, to "conside[r] whether the vestiges of de jure segregation ha[ve] been eliminated as far as practicable," ante, at 250, 112 L Ed 2d, at 730, the majority presumably views elimination of vestiges as part of "operat[ing] in compliance with the commands of the Equal Protection Clause." But as to the scope or meaning of "vestiges," the majority says very little.

By focusing heavily on present and future compliance with the Equal Protection Clause, the majority's standard ignores how the stigmatic harm identified in Brown I can persist even after the State ceases actively to enforce segregation.[6] It was not enough in Green, for example, for the school district to withdraw its own enforcement of segregation, leaving it up to individual children and their families to "choose"

which school to attend. For it was clear under the circumstances that these choices would be shaped by and perpetuate the state-created message of racial inferiority associated with the school district's historical involvement in segregation. In sum, our school-desegregation jurisprudence establishes that the *effects* of past discrimination remain chargeable to the school district regardless of its lack of continued enforcement of segregation, and the remedial decree is required until those effects have been finally eliminated.

III

Applying the standard I have outlined, I would affirm the Court of Appeals' decision ordering the District Court to restore the desegregation decree. For it is clear on this record that removal of the decree will result in a significant number of racially identifiable schools that could be eliminated.

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[6] Faithful compliance with the decree admittedly is relevant to the standard for dissolution. The standard for dissolution should require that the school district have exhibited faithful compliance with the decree for a period sufficient to assure the District Court that the school district is committed to the ideal of an integrated system. Cf. Morgan v Nucci, 831 F2d 313, 321 (CA1 1987) (addressing whether the school district has exhibited sufficient good faith "to indicate that further oversight of [student] assignments is not needed to forestall an imminent return to the unconstitutional conditions that led to the court's intervention").

As I have previously noted:

> "Racially identifiable schools are one of the primary vestiges of state-imposed segregation which an effective desegregation decree must attempt to eliminate. In Swann, supra, for example, we held that '[t]he district judge or school authorities . . . will thus necessarily be concerned with the elimination of one-race schools.' 402 US, at 26 [28 L Ed 2d 554, 91 S Ct 1267]. There is 'a presumption,' we stated, 'against schools that are substantially disproportionate in their racial composition.' Ibid. And in evaluating the effectiveness of desegregation plans in prior cases, we ourselves have considered the extent to which they discontinued racially identifiable schools. See, e. g., Green v County School Board of New Kent County, supra; Wright v Council of the City of Emporia, [407 US 451 [33 L Ed 2d 51, 92 S Ct 2196] (1972)]. For a principal end of any desegregation remedy is to ensure that it is no longer 'possible to identify a "white school" or a "Negro school,"' Swann, supra, at 18 [28 L Ed 2d 554, 91 S Ct 1267]. The evil to be remedied in the dismantling of a dual system is the '[r]acial identification of the
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> system's schools.' Green, 391 US, at 435 [20 L Ed 2d 716, 88 S Ct 1689]. The goal is a system without white schools or Negro schools—a system with 'just schools.' Id., at 442 [20 L Ed 2d 716, 88 S Ct 1689]. A school authority's remedial plan or a district court's remedial decree is to be judged by its effectiveness in achieving this end. See Swann, supra, at 25 [28 L Ed 2d 554, 91 S Ct 1267]; Davis [v Board of School Comm'rs of Mobile County, 402 US 33, 37 [28 L Ed 2d 577, 91 S Ct 1289] (1971)]; Green, supra, at 439 [20 L Ed 2d 716, 88 S Ct 1689]." Milliken I, 418 US, at 802-803, 41 L Ed 2d 1069, 94 S Ct 3112 (Marshall, J., dissenting).

Against the background of former state-sponsorship of one-race schools, the persistence of racially identifiable schools perpetuates the message of racial inferiority associated with segregation. Therefore, such schools must be eliminated whenever feasible.

It is undisputed that replacing the Finger Plan with a system of neighborhood school assignments for grades K-4 resulted in a system of racially identifiable schools. Under the SRP, over one-half of Oklahoma City's elementary schools now have student bodies that are either 90% Afro-American or 90% non-Afro-American. See supra, at 255, 112 L Ed 2d, at 733. Because this principal vestige of de jure segregation persists, lifting the decree would clearly be premature at this point. See Davis v East Baton Rouge Parish School Bd., 721 F2d 1425, 1434 (CA5 1983) ("[T]he continued existence of one-race schools is constitutionally unacceptable when reasonable alternatives exist").

The majority equivocates on the effect to be given to the reemergence of racially identifiable schools. It instructs the District Court to consider whether those "'most important indicia of a segregated system'" have been eliminated, reciting the facets of segregated school operations identified in Green—"'faculty, staff, transportation, extracurricular activities and facilities.'" Ante, at 250, 112 L Ed 2d, at 730. And, by rendering "res nova" the issue whether *residential* segregation in Oklahoma City is a vestige of former *school* segregation, ante at 250, n 2, 112 L Ed 2d, at 729–730, the majority accepts at least as a theoretical possibility

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that vestiges may exist beyond those identified in Green. Nonetheless, the majority hints that the District Court could ignore the effect of residential segregation in perpetuating racially identifiable schools if the court finds residential segregation to be "the result of private decisionmaking and economics." Ibid. Finally, the majority warns against the application of a standard that would subject formerly segregated school districts to the "Draconian" fate of "judicial tutelage for the indefinite future." Ante, at 249, 112 L Ed 2d, at 729.[7]

This equivocation is completely unsatisfying. First, it is well established that school segregation "may have a profound reciprocal effect on the racial composition of residential neighborhoods." Keyes, 413 US, at 202, 37 L Ed 2d 548, 93 S Ct 2686; see also Columbus Bd. of Education, 443 US, at 465, n 13, 61 L Ed 2d 666, 99 S Ct 2941 (acknowledging the evidence that "school segregation is a contributing cause of housing segregation"). The record in this case amply demonstrates this form of complicity in residential segregation on the part of the Board.[8] The District Court

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found as early as 1965 that the Board's use of neighborhood schools "serve[d] to . . . exten[d] areas of all Negro housing, destroying in the process already integrated neighborhoods and thereby increasing the number of segregated schools." 244 F Supp, at 977. It was because of the Board's responsibility for residential segregation that the District Court refused to permit the Board to superimpose a neighborhood plan over the racially isolated northeast quadrant. See id., at 976-977.

Second, there is no basis for the majority's apparent suggestion that the result should be different if residential segregation is now perpetuated by "private decisionmaking."

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[7] The majority also instructs the District Court to consider whether dissolution was appropriate "as of 1985," ante, at 249, 112 L Ed 2d, at 729, prior to the Board's adoption of the SRP. However, the effect of the Board's readoption of neighborhood attendance zones cannot be ignored arbitrarily. A district court, in evaluating whether dissolution of a desegregation decree is warranted, must consider whether conditions exist that are capable of inflicting the stigmatic harms associated with the original violation. The SRP demonstrates that lifting the decree would result in one-race schools which the decree was designed to eliminate. Even in cases lacking such tangible evidence of unremoved vestiges, a district court must anticipate what effect lifting a decree will have in order to assess dissolution.

[8] Again, our commitment to "make whole" relief requires that *any* injurious condition flowing from the constitutional violation must be remedied to the maximum extent practicable. See Milliken II, 433 US 267, 280-281, 287-288, 53 L Ed 2d 745, 97 S Ct 2749 (1977). Therefore, beyond eliminating vestiges concerning "faculty, staff, transportation, extracurricular activities and facilities," Green v New Kent County School Bd., 391 US 430, 435, 20 L Ed 2d 716, 88 S Ct 1689 (1968), other measures may be necessary to treat a "root condition shown by [the] record." Milliken II, supra, at 288, 53 L Ed 2d 745, 97 S Ct 2749. The remedial obligations of a school board, therefore, are defined by the effects of the board's past discriminatory conduct. On the issue whether residential segregation is a vestige, the relevant inquiry is whether the record shows that the board's past actions were a "contributing cause" to residential segregation. Columbus Bd. of Education v Penick, 443 US 449, 465, n 13, 61 L Ed 2d 666, 99 S Ct 2941 (1979).

The District Court's conclusion that the racial identity of the northeast quadrant now subsists because of "personal preference[s]," 677 F Supp, at 1512, pays insufficient attention to the roles of the State, local officials, and the Board in creating what are now self-perpetuating patterns of residential segregation. Even more important, it fails to account for the *unique* role of the School Board in creating "all-Negro" schools clouded by the stigma of segregation—schools to which white parents would not opt to send their children. That such negative "personal preferences" exist should not absolve a school district that played a role in creating such "preferences" from its obligation to desegregate the schools to the maximum extent possible.[9]

I also reject the majority's suggestion that the length of federal judicial supervision is a valid factor in assessing a dissolution. The majority is correct that the Court has never contemplated perpetual judicial oversight of former de jure segregated school districts. Our jurisprudence requires, however, that the job of school desegregation be fully completed and maintained so that the stigmatic harm identified in Brown I will not recur upon lifting the decree. Any doubt on the issue whether the School Board has fulfilled its remedial obligations should be resolved in favor of the Afro-American children affected by this litigation.[10]

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[9] Resistance to busing and the desire to attract white students to the public school system have been among the key motivations for incorporating magnet schools into desegregation plans. See Selig, The Reagan Justice Department and Civil Rights: What Went Wrong, 1985 U Ill L Rev 785, 802, n 57 (noting the Reagan Administration's touting of " 'special magnet schools' " as a means of improving education for all children without " 'forced transportation' "). The absence of magnet schools in the Oklahoma City desegregation plan suggests much untapped potential for changing attitudes towards schools in the system.

[10] The majority does not discuss the burden of proof under its test for dissolution of a school desegregation decree. However, every presumption we have established in our school desegregation cases has been *against* the school district found to have engaged in de jure segregation. See Dayton Bd. of Education v Brinkman, 443 US 526, 537, 61 L Ed 2d 720, 99 S Ct 2971 (1979) (conduct resulting in increased segregation was presumed to be caused by past intentional discrimination where dual system was never affirmatively remedied); Keyes v School Dist. No. 1, Denver, Colo., 413 US 189, 208, 37 L Ed 2d 548, 93 S Ct 2686 (1973) (proof of state-imposed segregation in a substantial portion of a school district will support a prima facie finding of a systemwide violation, thereby shifting the burden to school authorities to show that current segregation is not caused by past intentional discrimination); Swann v Charlotte-Mecklenburg Bd. of Education, 402 US 1, 26, 28 L Ed 2d 554, 91 S Ct 1267 (1971) (establishing a presumption against racially identifiable schools once past state discrimination has been shown, thereby shifting the burden to the school district to show that current segregation was not caused by past intentional discrimination). Moreover, in addition to the "affirmative duty" placed upon school districts to eliminate vestiges of their past discrimination, Green, 391 US, at 437-438, 20 L Ed 2d 716, 88 S Ct 1689, school districts initially have the burden of coming forward with desegregation plans and establishing that such plans promise to be effective. Id., at 439, 20 L Ed 2d 716, 88 S Ct 1689. And, while operating under a decree, a school board has a "heavy burden" to justify use of less effective or resegregative methods. Ibid. Accord, Dayton, supra, at 538, 61 L Ed 2d 720, 99 S Ct 2971; Wright v Council of City of Emporia, 407 US 451, 467, 33 L Ed 2d 51, 92 S Ct 2196 (1972).

Given the original obligation placed on formerly de jure segregated school districts to provide an effective remedy that will eliminate all vestiges of its segregated past, a school district seeking dissolution of an injunctive decree should also bear the burden of proving that this obligation has been fulfilled. Cf. Keyes, supra, at 211, n 17, 37 L Ed 2d 548, 93 S Ct 2686 (noting that the plaintiffs should not bear the burden of proving "non-attenuation").

In its concern to spare local school boards the "Draconian" fate of "indefinite" "judicial tutelage," ante, at 249, 112 L Ed 2d, at 729, the majority risks subordination of the constitutional rights of Afro-American children to the interest of school board autonomy.[11] The courts must consider the value of local control, but that factor primarily relates to the feasibility of a remedial measure, see Milliken II, 433 US, at 280-281, 53 L Ed 2d 745, 97 S Ct 2749, not whether the constitutional violation has been remedied. Swann establishes that if further desegregation is "reasonable, feasible, and workable," 402 US, at 31, 28 L Ed 2d 554, 91 S Ct 1267, then it must be undertaken. In assessing whether the task is complete, the dispositive question is whether vestiges capable of inflicting stigmatic harm exist in the system and whether all that can practicably be done to eliminate those vestiges has been done. The Court of Appeals concluded that "on the basis of the record, it is clear that other measures that are feasible remain available to the Board [to avoid racially identifiable schools]." 890 F2d,

at 1505. The School Board does not argue that further desegregation of the one-race schools in its system is unworkable and in light of the proven feasibility of the Finger Plan, I see no basis for doubting the Court of Appeals' finding.

We should keep in mind that the court's active supervision of the desegregation process ceased in 1977. Retaining the decree does not require a return to active supervision. It may be that a modification of the decree which will improve its effectiveness and give the school district more flexibility in minimizing busing is appropriate in this case. But retaining the decree seems a slight burden on the school district compared with the risk of not delivering a full remedy to the Afro-American children in the school system.[12]

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[11] That "judicial tutelage" over the Oklahoma City School Board subsists at this late date is largely due to the Board's failure to take advantage of opportunities it had at its disposal at the outset. It could have abolished and located new schools with a view toward promoting integration and shaping (rather than following) public attitudes toward its schools. See supra, at 254, 112 L Ed 2d, at 732. It could have come forward with its own meaningful desegregation plan—a plan that would have been tailored to its particular concerns, including minimizing busing. Ibid. A school district's failures in this regard, however, should not lead federal courts, charged with assuring that constitutional violations are fully remedied, to renounce supervision of unfinished tasks because of the lateness of the hour.

The concepts of temporariness and permanence have no direct relevance to courts' powers in this context because the continued need for a decree will turn on whether the underlying purpose of the decree has been achieved. "The injunction . . . is 'permanent' only for the temporary period for which it may last. It is justified only by the violence that induced it and only so long as it counteracts a continuing intimidation. Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted." Milk Wagon Drivers v Meadowmoor Dairies, Inc., 312 US 287, 298, 85 L Ed 836, 61 S Ct 552, 132 ALR 1200 (1941).

[12] Research indicates that public schools with high concentrations of poor and minority students have less access to experienced, successful teachers and that the slow pace of instruction at such schools may be "hinder[ing] students' academic progress, net of their own aptitude levels." See Gamoran, Resource Allocation and the Effects of Schooling: A Sociological Perspective, in Microlevel School Finance: Issues and Implications for Policy 207, 214 (D. Monk & J. Underwood eds 1988).

IV

Consistent with the mandate of Brown I, our cases have imposed on school districts an unconditional duty to eliminate *any* condition that perpetuates the message of racial inferiority inherent in the policy of state-sponsored segregation. The racial identifiability of a district's schools is such a condition. Whether this "vestige" of state-sponsored segregation will persist cannot simply be ignored at the point where a district court is contemplating the dissolution of a desegregation decree. In a district with a history of state-sponsored school segregation, racial separation, in my view, *remains* inherently unequal.

I dissent.

[498 US 269]

FIRSTIER MORTGAGE COMPANY, aka REALBANC, INC., Petitioner

v

INVESTORS MORTGAGE INSURANCE COMPANY

498 US 269, 112 L Ed 2d 743, 111 S Ct 648

[No. 89-1063]

Argued October 10, 1990. Decided January 15, 1991.

Decision: Premature notice of appeal filed from Federal District Court's bench ruling held effective notice of appeal, under Federal Rule of Appellate Procedure 4(a)(2), from subsequently entered final judgment.

SUMMARY

A mortgage company filed a diversity suit in Federal District Court against an insurance company for breach of contract and breach of duty of good faith and fair dealing. On January 26, 1989, the District Court (1) announced from the bench that it was granting the insurance company's motion for summary judgment, (2) stated that its ruling extinguished both of the mortgage company's claims, and (3) requested that the insurance company submit proposed findings of fact and conclusions of law to support the ruling. However, the District Court Judge did not explicitly exclude the possibility that he might change his mind in the interim. The mortgage company filed a notice of appeal on February 8, 1989, which notice identified the January 26 bench ruling as the decision from which the appeal was being taken. On March 3, 1989, the District Court issued findings of fact and conclusions of law in support of its bench ruling. In a separate document, also dated March 3, 1989, the District Court entered judgment. On appeal, the United States Court of Appeals for the Tenth Circuit dismissed the mortgage company's appeal, on the ground that the bench ruling was not "final" under 28 USCS § 1291, which gives United States Courts of Appeals jurisdiction of appeals from all final decisions of Federal District Courts. However, the Court of Appeals did not address the question whether the notice of appeal could have been effective as a notice of appeal from the March 3 final judgment, pursuant to Rule 4(a)(2) of the Federal Rules of Appellate Procedure, which provides that a notice of appeal filed after the

Briefs of Counsel, p 1234, infra.

announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof.

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by MARSHALL, J., expressing the unanimous view of the court, it was held that (1) under Rule 4(a)(2), a premature notice of appeal relates forward to the date of entry of a final judgment only when the ruling designated in the notice is a "decision" for purposes of Rule 4(a)(2); (2) even if the District Court's bench ruling were assumed not to be "final" within the meaning of 28 USCS § 1291, the bench ruling was a "decision" for purposes of Rule 4(a)(2), because (a) the ruling purported to dispose of all the mortgage company's claims, and (b) the ruling would have been "final" if the District Court had set forth the judgment immediately following the ruling and if the clerk had entered the judgment on the docket; (3) thus, the mortgage company's notice of appeal should have been treated, under Rule 4(a)(2), as an effective notice of appeal from the final judgment, given that (a) the mortgage company's belief in the finality of the bench ruling was reasonable under the circumstances, (b) the case presented precisely the situation contemplated by Rule 4(a)(2)'s drafters, and (c) no unfairness to the insurance company would have resulted from allowing the appeal to go forward; and (4) accordingly, the Court of Appeals erred in dismissing the appeal as taken from a nonfinal decision.

KENNEDY, J., concurring, expressed the view that (1) the bench ruling had sufficient attributes of finality to be a "decision" under the saving provision of Rule 4(a)(2), and (2) it was appropriate to talk in terms of finality in the case at hand, but (3) the saving provision applies as well to a trial court's announcement of an "order," and (4) in cases involving orders that are appealable even though they do not possess attributes of finality, operation of the saving provision would not be controlled by whether the trial court's announcement was in the nature of a final judgment.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 930, 959 — premature filing of notice — bench ruling

1a-1c. A Federal District Court's bench ruling—in which the District Court (1) announces that it intends to grant summary judgment for the defendant, (2) states that its ruling extinguishes both of the plaintiff's claims, and (3) requests that the defendant submit proposed findings of fact and conclusions of law to support the ruling—is a "decision" for purposes of Rule 4(a)(2) of the Federal Rules of Appellate Procedure, which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof; even assuming that such a bench ruling is not final, given that

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32A Am Jur 2d, Federal Practice and Procedure §§ 901, 933, 1046

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review §§ 3:309, 3:341, 3:461

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review §§ 3:35, 3:35.5

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Form 2311

28 USCS § 1291; USCS Court Rules, Federal Rules of Appellate Procedure, Rule 4(a)(2)

US L Ed Digest, Appeal §§ 930, 959

Index to Annotations, Appeal and Error; Appellate Procedure Rules; Finality and Conclusiveness

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

What constitutes "collateral order" which is immediately appealable under 28 USCS § 1291—Supreme Court cases. 99 L Ed 2d 991.

When will premature notice of appeal be retroactively validated in federal civil case. 76 ALR Fed 199.

Sufficiency of "designation," under Federal Appellate Procedure Rule 3(c) or former Federal Civil Procedure Rule 73(b), of judgment or order appealed from in civil case by notice of appeal not specifically designating such judgment or order. 2 ALR Fed 545.

the District Court could change its mind prior to entry of judgment, the bench ruling is a "decision" because (1) it purports to dispose of all the plaintiff's claims, and (2) it would be "final" for purposes of 28 USCS § 1291 if the District Court were to set forth the judgment immediately following the bench ruling and if the clerk were to enter the judgment on the docket; thus, where such a bench ruling is announced on January 26, but the District Court enters a final judgment on March 3, a premature notice of appeal filed by the plaintiff on February 8 is to be treated, under Rule 4(a)(2), as an effective notice of appeal from the final judgment, because (1) the plaintiff's belief in the finality of the bench ruling is reasonable under the circumstances; (2) the case presents precisely the situation contemplated by Rule 4(a)(2)'s drafters; and (3) no unfairness to the defendant results from allowing the appeal to go forward.

Appeal § 959 — premature notice — purpose of rule

2. Rule 4(a)(2) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—is intended to codify a general practice in the United States Courts of Appeals of deeming certain premature notices of appeal effective, in recognition of the principles that (1) unlike a tardy notice of appeal, certain premature notices do not prejudice the appellee, and (2) the technical defect of prematurity therefore should not be allowed to extinguish an otherwise proper appeal.

Appeal § 23 — what rulings are final

3a, 3b. Except for a small class of rulings that are governed by the "collateral order doctrine," a ruling is "final" within the meaning of 28 USCS § 1291—which gives United States Courts of Appeals jurisdiction of appeals from all final decisions of Federal District Courts—only if (1) the ruling ends the litigation on the merits, and (2) the judge clearly declares his intention in this respect.

Appeal § 1662 — effect of decision on other grounds

4. On certiorari to review a United States Court of Appeals' decision which held that a Federal District Court's bench ruling was not final and thus not appealable under 28 USCS § 1291, the United States Supreme Court will not resolve the question whether the bench ruling was final, where the Supreme Court holds that the bench ruling, even if assumed not to be final, was a "decision" within the meaning of Rule 4(a)(2) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—and that a premature notice of appeal filed from the bench ruling should thus be treated as an effective notice of appeal from a subsequently entered final judgment.

Appeal §§ 22, 959 — notice — nonfinal decision — bench ruling

5a-5c. Under Rule 4(a)(2) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—a premature notice of appeal does not ripen until judgment is entered; thus, a premature notice of appeal from a Federal District Court's bench ruling is permitted to relate forward to a subsequently entered final judgment and to serve as an effective notice of appeal from the final judgment, even if the bench ruling is not "final" within the meaning of 28 USCS § 1291, which gives United States Courts of Appeals jurisdiction of appeals from all final decisions of Federal District Courts; under such circumstances, Rule 4(a)(2) does not render the bench ruling itself appealable in contravention of § 1291; this interpretation of Rule 4(a)(2) comports with its drafters' intent to protect the unskilled litigant who (1) files a notice of appeal from a decision that the litigant reasonably but mistakenly believes to be a final judgment, and (2) fails to file a notice of appeal from the actual final judgment.

Appeal §§ 22, 959 — notice — nonfinal decision — appellate jurisdiction

6a-6d. Rule 4(a)(2) of the Federal Rules of Appellate Procedure (FRAP)—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—permits a notice of appeal from a Federal District Court's nonfinal decision to operate as a notice of appeal from a subsequently entered final judgment only when the nonfinal decision would be appealable if immediately followed by the entry of judgment; construing Rule 4(a)(2) to cure premature notices of appeal from such nonfinal decisions does not enlarge appellate jurisdiction beyond that conferred by 28 USCS § 1291, and therefore such a construction does not contravene Rule 1(b) of the FRAP.

Appeal § 959 — premature notice — ruling as "decision"

7a, 7b. Under Rule 4(a)(2) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—a premature notice of appeal relates forward to the date of entry of a final "judgment" only when the ruling designated in the notice is a "decision" for purposes of Rule 4(a)(2).

Appeal § 959 — premature notice — interlocutory decisions

8. Rule 4(a)(2) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgment, shall be treated as filed after such entry and on the day thereof—does not permit a notice of appeal from a clearly interlocutory decision, such as a discovery ruling or a sanction order under Rule 11 of the Federal Rules of Civil Procedure, to serve as a notice of appeal from the final judgment.

Appeal §§ 929, 959 — judgment-designation requirement — notice

9a, 9b. The requirement of Rule 3(c) of the Federal Rules of Appellate Procedure (FRAP) that the appellant "designate the judgment, order or part thereof appealed from" is to be construed in light of all the circumstances; for purposes of Rule 3(c), a notice of appeal from a "decision" within the meaning of Rule

4(a)(2) of the FRAP—that is, a decision that would be appealable if immediately followed by the entry of judgment—sufficiently manifests an intent to appeal from the final judgment.

Appeal § 959 — effectiveness of notice

10a, 10b. An appellant's premature notice of appeal is not rendered ineffective by Rule 4(a)(4) of the Federal Rules of Appellate Procedure—which provides that a notice of appeal filed before the disposition of certain enumerated motions shall have no effect—where the appellant has not filed any of the motions enumerated under Rule 4(a)(4).

Appeal § 1212 — dismissal — nonfinal judgment

11. A United States Court of Appeals errs in dismissing a party's appeal as taken from a nonfinal decision, where (1) a Federal District Court announced on January 26 that it intended to grant a motion for summary judgment against the party; (2) the party filed a notice of appeal on February 8; (3) the District Court rendered a final judgment on March 3; and (4) by virtue of Rule 4(a)(2) of the Federal Rules of Appellate Procedure, the February 8 notice of appeal constituted a timely notice of appeal from the final judgment.

SYLLABUS BY REPORTER OF DECISIONS

Federal Rule of Appellate Procedure 4(a)(2) provides that a "notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof." On January 26, 1989, the District Court announced from the bench that it intended to grant a motion for summary judgment filed by respondent Investors Mortgage Insurance Co. (IMI) in a suit brought by petitioner FirsTier Mortgage Co. (FirsTier) against IMI, requested that the parties file proposed findings of fact and conclusions of law to support that ruling, and clarified that its ruling extinguished all of FirsTier's claims. FirsTier filed a notice of appeal on February 8, identifying the January 26 ruling as the decision from which it was appealing, but the District Court did not enter judgment until March 3. The Court of Appeals dismissed the appeal on the ground that the January 26 decision was not a final decision appealable under 28 USC § 1291 [28 USCS § 1291].

Held: Rule 4(a)(2) permits a notice of appeal filed from a nonfinal decision to serve as an effective notice of appeal from a subsequently entered final judgment when a district court announces a decision that would be appealable if immediately followed by the entry of judgment. In such an instance, it would be reasonable for a litigant to believe that the decision is final, and permitting a notice of appeal to become effective when judgment is entered would not catch the appellee by surprise. This interpretation of the Rule best comports with its drafters' intent. And it does not contravene Rule 1(b)'s prohibition on construing the appellate Rules to extend or limit courts' jurisdiction as established by law. Even if a bench ruling were not final under § 1291, Rule 4(a)(2) would not render that ruling appealable in contravention of § 1291. Rather, it treats the premature notice as a notice filed from the subsequently entered judgment. The instant bench ruling is a "decision" under the Rule. It purported to dispose of all of FirsTier's claims and would have been final under § 1291 had the judge set forth his judgment immediately and the clerk entered the judgment on the docket. FirsTier's confusion as to the litigation's status was understandable, and no unfairness to IMI results from allowing the appeal to go forward.

Reversed and remanded.

Marshall, J., delivered the opinion for a unanimous Court. Kennedy, J., filed a concurring opinion.

APPEARANCES OF COUNSEL

Jack S. Dawson argued the cause for petitioner.

John P. Roberts argued the cause for respondent.

Briefs of Counsel, p 1234, infra.

OPINION OF THE COURT

Justice **Marshall** delivered the opinion of the Court.

[1a] Federal Rule of Appellate Procedure 4(a)(2) provides that a "notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof." In this case, petitioner filed its notice of appeal after the District Court announced from the bench that it intended to grant summary judgment for respondent, but before entry of judgment and before the parties had, at the court's request, submitted proposed findings of fact and conclusions of law. The question presented is whether the bench ruling is a "decision" under Rule 4(a)(2). We hold that it is.

I

Respondent, Investors Mortgage Insurance Co. (IMI), issued eight insurance policies to petitioner, FirsTier Mortgage Co. (FirsTier). The parties intended these policies to insure FirsTier for the risk of borrower default on eight real estate loans that FirsTier had made. After the eight borrowers defaulted, FirsTier submitted claims on the policies, which IMI refused to pay. Invoking the District Court's diversity jurisdiction under 28 USC § 1332 [28 USCS § 1332], FirsTier filed suit, seeking damages for IMI's alleged breach of contract and breach of its duty of good faith and fair dealing.

On January 26, 1989, the District Court held a hearing on IMI's motion for summary judgment. After hearing argument from counsel, the District Court announced from the bench that it was granting IMI's motion. The judge stated

that FirsTier's eight policies had been secured from IMI through fraud or bad faith and therefore were void:

> "I find that the policies should be and are cancelled as void for want of [sic] fraud, bad faith. The Court has heard no evidence in the matter of this hearing to change its mind from holding that the policies are void.
>
> "Of course in a case of this kind, the losing party has a right to appeal. If the Court happens to be wrong, I don't think I am, but if the Court happens to be wrong, it could be righted by the Circuit.

> "The Court does find that [IMI] relied on the package [of information furnished by FirsTier] in each of these loans and the package was not honest. In fact it was dishonest. The dishonesty should and does void the policy." App 27.

The District Court then requested that IMI submit proposed findings of fact and conclusions of law to support the ruling, adding that FirsTier would thereafter be permitted to submit any objections it might have to IMI's proposed findings:

> "The Court will then look at what you submit as your suggestion and it is your suggestion only. The Court then will modify, add to it, delete and write its own findings of fact and conclusions of law and judgment in each of these eight policies that we have talked about.
>
> . . . . .
>
> "And if [FirsTier] cares to do so, within five days you may file with the Court your objection or suggestion wherein you find that the suggestions of [IMI] are in error, if you care to do so." Ibid.

Finally, the District Court clarified that its ruling extinguished both FirsTier's claim for breach of contract and FirsTier's claim for breach of the duty of good faith and fair dealing. Id., at 28.

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FirsTier filed its notice of appeal on February 8, 1989, identifying the January 26 bench ruling as the decision from which it was appealing. On March 3, 1989, the District Court issued its findings of fact and conclusions of law in support of its ruling that IMI was entitled to summary judgment. In a separate document, also dated March 3, 1989, the District Court entered judgment. See Fed Rule Civ Proc 58 (requiring that "[e]very judgment shall be set forth on a separate document").

After notifying the parties that it was considering dismissing FirsTier's appeal for lack of jurisdiction, the Court of Appeals requested that the parties brief two issues: first, whether the February 8 notice of appeal was filed prematurely; and, second, whether the January 26 bench ruling was a final decision appealable under 28 USC § 1291 [28 USCS § 1291]. See App to Pet for Cert B-2. The Court of Appeals dismissed the appeal on the ground that the January 26 decision was not final under § 1291. The court did not address whether FirsTier's notice of appeal could be effective as a notice of appeal from the March 3 final judgment despite the fact that it identified the January 26 ruling as the ruling appealed from. See id., at A-2. We granted certiorari, 494 US 1003, 108 L Ed 2d 472, 110 S Ct 1295 (1990), and now reverse.

II

[2] The issue before us is whether FirsTier's February 8 notice of appeal is fatally premature. Federal Rule of Appellate Procedure 4(a)(1) requires an appellant to file its notice of appeal "within 30 days after the date of entry of the judgment or order appealed from." See also 28 USC § 2107 [28 USCS § 2107]. In this case, FirsTier filed its notice of appeal close to a month before entry of judgment. However, under Federal Rule of Appellate Procedure 4(a)(2) a notice of appeal "filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after

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such entry and on the day

thereof."[1] Added to the Federal Rules in 1979, Rule 4(a)(2) was intended to codify a general practice in the courts of appeals of deeming certain premature notices of appeal effective. See Advisory Committee's Note on Fed Rule App Proc 4(a)(2), 28 USC App, p 516 [USCS Court Rules, Fed Rules of App Proc, Notes following Rule 4]. The Rule recognizes that, unlike a tardy notice of appeal, certain premature notices do not prejudice the appellee and that the technical defect of prematurity therefore should not be allowed to extinguish an otherwise proper appeal. See In re Grand Jury Impaneled Jan. 21, 1975, 541 F2d 373, 377 (CA3 1976) (cited with approval in Advisory Committee's Note on Fed Rule App Proc 4(a)(2), supra, at 516 [USCS Court Rules, Fed Rules of App Proc, Notes following Rule 4]); Hodge v Hodge, 507 F2d 87, 89 (CA3 1975) (same).

[3a] IMI maintains that the relation forward provision of Rule 4(a)(2) rescues a premature notice of appeal only if such notice is filed after the announcement of a decision that is "final" within the meaning of 28 USC § 1291 [28 USCS § 1291].[2] IMI further contends that the January 26 bench ruling did not constitute a final decision. For a ruling to be final, it must "en[d] the litigation on the merits," Catlin v United States, 324 US 229,

233, 89 L Ed 911, 65 S Ct 631 (1945) (citation omitted),[3] and the judge must "clearly declar[e] his intention in this respect," United States v F. & M. Schaefer Brewing Co. 356 US 227, 232, 2 L Ed 2d 721, 78 S Ct 674 (1958). IMI contends that the judge did not clearly intend to terminate the litigation on the merits. Although the judge stated from the bench his legal conclusions about the case, he also stated his intention to set forth his rationale in a more detailed and disciplined fashion at a later date. Moreover, the judge did not explicitly exclude the possibility that he might change his mind in the interim.

[4, 5a, 6a, 7a] We find it unnecessary to resolve this question whether the bench ruling was final. For we believe the Court of Appeals erred in its threshold determination that a notice of appeal filed from a bench ruling can only be effective if the bench ruling is itself a final decision. Rather, we conclude that Rule 4(a)(2) permits a notice of appeal filed from certain nonfinal decisions to serve as an effective notice from a subsequently entered final judgment.[4]

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[1] Rule 4(a)(2) applies "[e]xcept as provided in (a)(4) of this Rule." Rule 4(a)(4) states, in pertinent part:

"If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above."

[2] Section 1291 provides that "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States."

[3] **[3b]** An exception to this general principle, not applicable here, is the "collateral order doctrine," which permits appeals under § 1291 from a small class of rulings that do not end the litigation on the merits. See Cohen v Beneficial Industrial Loan Corp. 337 US 541, 545-547, 93 L Ed 1528, 69 S Ct 1221 (1949).

[6b] To support its contention that Rule 4(a)(2) cannot permit a premature notice of appeal from a nonfinal decision, IMI relies on Federal Rule of Appellate Procedure 1(b). Rule 1(b) provides that the appellate Rules "shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law." According to IMI, construing Rule

[498 US 275]

4(a)(2) to cure premature notices of appeal from nonfinal decisions would contravene Rule 1(b) by enlarging appellate jurisdiction beyond that conferred by 28 USC § 1291 [28 USCS § 1291], the relevant jurisdictional statute.

[5b, 6c] IMI misinterprets Rule 4(a)(2). Under Rule 4(a)(2), a premature notice of appeal does not ripen until judgment is entered. Once judgment is entered, the Rule treats the premature notice of appeal "as filed after such entry." Thus, even if a bench ruling in a given case were not "final" within the meaning of § 1291, Rule 4(a)(2) would not render that ruling appealable in contravention of § 1291. Rather, it permits a premature notice of appeal from that bench ruling to relate forward to judgment and serve as an effective notice of appeal *from the final judgment*.

[5c] In our view, this interpretation of Rule 4(a)(2) best comports with its drafters' intent, as cases cited in the Advisory Committee's Note on Rule 4(a)(2) confirm. For example, in Ruby v Secretary of Navy, 365 F2d 385 (CA9 1966), cert denied, 386 US 1011, 18 L Ed 2d 442, 87 S Ct 1358 (1967), the appellant filed his notice of appeal from an order of the District Court that dismissed the complaint without dismissing the action. The Court of Appeals determined that the ruling was not a final decision under § 1291, because the ruling left open an opportunity for the appellant to save his cause of action by amending his complaint. 365 F2d, at 387. Nonetheless, the court ruled that the notice of appeal from the nonfinal ruling could serve as a notice of appeal from the subsequently filed final order dismissing the action. Id., at 387-389.

The Advisory Committee's Note also cites Firchau v Diamond National Corp. 345 F2d 269 (CA9 1965), a case relied on by Ruby. In Firchau, the District Court dismissed the appellant's complaint without dismissing the action. The appellant then filed a notice seeking to appeal from the District Court's ruling with respect to one of the claims in the complaint. The Court of Appeals noted that the ruling dismissing the complaint might not have been appealable but nonetheless

[498 US 276]

held that the notice of appeal could be regarded as a notice from the subsequent final judgment dismissing the case. See 345 F2d, at 270-271. Ruby, Firchau, and the other cases cited by the Advisory Committee[5] suggest that Rule 4(a)(2) was intended to protect the unskilled litigant who files a notice of appeal from a decision that he reasonably but mistakenly believes to be a final judgment, while failing to file a notice of appeal from the actual final judgment.

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[4] **[7b]** Rule 4(a)(2) refers to "a notice of appeal filed after the announcement of a *decision or order* but before the entry of *the judgment or order*" (emphasis added). Thus, under the Rule, a premature notice of appeal relates forward to the date of entry of a final "judgment" only when the ruling designated in the notice is a "decision" for purposes of the Rule. We define "decision" with this situation in mind. We offer no view on the meaning of the term "order" in Rule 4(a)(2) or on the operation of the Rule when the jurisdiction of the court of appeals is founded on a statute other than § 1291.

[6d, 8, 9a] This is not to say that Rule 4(a)(2) permits a notice of appeal from a clearly interlocutory decision—such as a discovery ruling or a sanction order under Rule 11 of the Federal Rules of Civil Procedure—to serve as a notice of appeal from the final judgment. A belief that such a decision is a final judgment would *not* be reasonable. In our view, Rule 4(a)(2) permits a notice of appeal from a nonfinal decision to operate as a notice of appeal from the final judgment only when a district court announces a decision that *would be* appealable if immediately followed by the entry of judgment. In these instances, a litigant's confusion is understandable, and permitting the notice of appeal to become effective when judgment is entered does not catch the appellee by surprise. Little would be accomplished by prohibiting the court of appeals from reaching the merits of such an appeal. See Hodge, 507 F2d, at 89.[6]

[1b, 10a] Applying this principle to the case at hand, we conclude that the District Court's January 26 bench ruling was a "decision" for purposes of Rule 4(a)(2). Even assuming that the January 26 bench ruling was not final because the District Court could have changed its mind prior to entry of judgment, the fact remains that the bench ruling did announce a decision purporting to dispose of all of FirsTier's claims. Had the judge set forth the judgment immediately following the bench ruling, and had the clerk entered the judgment on the docket, see Fed Rules Civ Proc 58 and 79(a), there is no question that the bench ruling would have been "final" under § 1291. Under such circumstances, FirsTier's belief in the finality of the January 26 bench ruling was reasonable, and its premature February 8 notice therefore should be treated as an effective notice of appeal from the judgment entered on March 3.[7]

[1c] In reaching our conclusion, we observe that this case presents precisely the situation contemplated by Rule 4(a)(2)'s drafters. FirsTier's confusion as to the status of the litigation at the time it filed its notice of appeal was understandable. By its February 8 notice of appeal, FirsTier clearly sought, albeit inartfully, to appeal from the judgment that in fact was entered on March 3. No unfairness to IMI results from allowing the appeal to go forward.

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[5] See In re Grand Jury Impaneled Jan. 21, 1975, 541 F2d 373 (CA3 1976); Hodge v Hodge, 507 F2d 87 (CA3 1975); Song Jook Suh v Rosenberg, 437 F2d 1098 (CA9 1971).

[6] **[9b]** Federal Rule of Appellate Procedure 3(c) requires that the appellant "designate the judgment, order or part thereof appealed from." As we have recognized, however, Rule 3(c)'s judgment-designation requirement is to be construed "in light of all the circumstances." Torres v Oakland Scavenger Co. 487 US 312, 316, 101 L Ed 2d 285, 108 S Ct 2405 (1988); see Foman v Davis, 371 US 178, 9 L Ed 2d 222, 83 S Ct 227 (1962). In Foman, we established that a notice of appeal that designates a postjudgment motion should be treated as noting an appeal from the final judgment when the appellant's intention to appeal the final judgment is sufficiently "manifest" that the appellee is not misled. See id., at 181, 9 L Ed 2d 222, 83 S Ct 227. In our view, a notice of appeal from a Rule 4(a)(2) "decision"—that is, a decision that would be appealable if immediately followed by the entry of judgment—sufficiently manifests an intent to appeal from the final judgment for purposes of Rule 3(c).

[7] **[10b]** Because FirsTier did not file any of the motions enumerated under Federal Rule of Appellate Procedure 4(a)(4), see n 1, supra, Rule 4(a)(4) does not render its premature notice of appeal ineffective.

III

[11] Because the District Court rendered a final judgment on March 3, and because, by virtue of Rule 4(a)(2), FirsTier's February 8 notice of appeal constituted a timely notice of appeal from that judgment, the Court of Appeals erred in dismissing FirsTier's appeal. Accordingly, the judgment of

[498 US 278]

the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

SEPARATE OPINION

Justice **Kennedy,** concurring.

I concur in the Court's opinion. The Court determines that the announcement by the trial court, though not necessarily a final decision within the meaning of 28 USC § 1291 [28 USCS § 1291], had sufficient attributes of finality to be a "decision" under the saving provision of Rule 4(a)(2) of the Federal Rules of Appellate Procedure. It is appropriate to talk in terms of finality in the case before us because "the bench ruling did announce a decision purporting to dispose of all of FirsTier's claims." Ante, at 277, 112 L Ed 2d, at 753. I would add, however, that the saving provision of Rule 4(a)(2) applies as well to the announcement of an "order," and that some orders are appealable even though they do not possess attributes of finality. See 28 USC § 1292(a) [28 USCS § 1292(a)]. In such cases, operation of the saving provision would not be controlled by whether the trial court's announcement was in the nature of a final judgment.

[498 US 279]

COY R. GROGAN, et al., Petitioners

v

FRANK J. GARNER, JR.

498 US 279, 112 L Ed 2d 755, 111 S Ct 654

[No. 89-1149]

Argued October 29, 1990. Decided January 15, 1991.

Decision: Standard of proof, in determination of dischargeability of debt in bankruptcy under 11 USCS § 523(a), held to be preponderance of evidence.

SUMMARY

A debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code (11 USCS §§ 1101-1174) in the United States Bankruptcy Court for the Western District of Missouri, listing as a dischargeable debt a judgment previously entered against him for fraud in connection with the sale of corporate securities. The judgment creditors filed a complaint in the bankruptcy proceeding requesting a determination that their claim against the debtor based on the fraud judgment was exempt from discharge in bankruptcy pursuant to 11 USCS § 523(a), which provides that certain types of debt are excepted from discharge in bankruptcy and which specifies, in 11 USCS § 523(a)(2)(A), that a discharge in bankruptcy does not discharge an individual from any debt to the extent that such debt is obtained by "actual fraud." After the judgment creditors introduced portions of the record in the fraud case, the Bankruptcy Court found that all the elements required to establish actual fraud under § 523 had been proved and that the doctrine of collateral estoppel required a holding that the debt was therefore not dischargeable, notwithstanding the debtor's contention that collateral estoppel did not apply inasmuch as the jury instructions in the fraud trial merely required that fraud be proved by a preponderance of the evidence, whereas § 523 requires proof by clear and convincing evidence (73 BR 26). The United States District Court for the Western District of Missouri affirmed. On appeal, the United States Court of Appeals for the Eighth Circuit reversed, holding that § 523 requires proof by clear and convincing evidence, at least in fraud cases (881 F2d 579).

On certiorari, the United States Supreme Court reversed. In an opinion

Briefs of Counsel, p 1234, infra.

by Stevens, J., expressing the unanimous view of the court, it was held that the standard of proof for the dischargeability exceptions in § 523(a) is the ordinary preponderance-of-the-evidence standard, because (1) neither the language of § 523 nor the legislative history of § 523 or its statutory predecessor prescribes the standard of proof for the discharge exceptions, and this silence is inconsistent with the view that Congress intended to require a special, heightened standard of proof; (2) in the context of the discharge exemptions, a debtor in bankruptcy does not have an interest in discharge sufficient to require a heightened standard of proof; (3) § 523(a) groups together in the same subsection a variety of exceptions to discharge without any indication that any particular exception is subject to a special standard of proof, which suggests that the legislators intended the same standard of proof—the ordinary preponderance standard—to govern the applicability of all the discharge exceptions; (4) even if most states, at the time the current Bankruptcy Code was enacted, required proof of fraud by clear and convincing evidence, this does not support the conclusion that Congress intended to adopt the clear-and-convincing-evidence standard for the fraud discharge exception; (5) in view of the split of judicial authority as to the proper standard of proof which existed at the time § 523 was enacted, it is not reasonable to conclude that in enacting § 523 Congress silently endorsed a background rule that clear and convincing evidence is required to establish exemption from discharge; and (6) the application of the preponderance standard will permit exception from discharge of all fraud claims which creditors have successfully reduced to judgment, which result accords with the historical development of the discharge exceptions.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Evidence §§ 110, 180, 383; Statutes §§ 102, 103, 108.5, 129, 145.4, 149 — burden of proof — bankruptcy — exceptions to discharge of debt — fraud

1a-1g. The standard of proof for the dischargeability exceptions of 11 USCS § 523(a), providing that certain kinds of debt shall not be discharged in bankruptcy, is the ordinary preponderance-of-the-evidence standard, because (1) the language of § 523 does not prescribe the standard of proof for the discharge exceptions, and the legislative history of § 523 and its statutory predecessor is also silent on this issue; this silence is inconsistent with the view

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9A Am Jur 2d Bankruptcy § 835

5 Federal Procedure, L Ed, Bankruptcy §§ 9:652-9:660

4 Federal Procedural Forms, L Ed, Bankruptcy §§ 9:883, 9:923, 9:924

4 Am Jur Pl & Pr Forms (Rev), Bankruptcy, Form 269

11 USCS § 523(a)

Bankruptcy Service, L Ed, Summary §§ 10A:200-10A:206, 10A:223-10A:225; Code Commentary and Analysis §§ 22:66-22:93; Statutes § 61:223

US L Ed Digest, Evidence §§ 110, 180

Index to Annotations, Bankruptcy and Insolvency; Degree and Standard of Proof; Fraud and Deceit; Preponderance of Evidence

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Authority of Congress under bankruptcy clause of Federal Constitution (Art I, § 8, cl 4) to legislate on the subject of bankruptcies—federal cases. 71 L Ed 2d 905.

Bankruptcy: What constitutes embezzlement of funds giving rise to nondischargeable debt under 11 USCS § 523(a)(4). 99 ALR Fed 124.

What constitutes reliance on loan or credit application under Bankruptcy Code provision concerning nondischargeability of individual debt obtained through false pretenses, false representation, or actual fraud, other than statement respecting insider's financial condition (11 USCS § 523(a)(2)(A)). 97 ALR Fed 402.

that Congress intended to require a special, heightened standard of proof; (2) the preponderance-of-the-evidence standard is presumed to be applicable in civil actions between private parties unless particularly important individual interests or rights are at stake, and in the context of the discharge exemptions, a debtor in bankruptcy does not have an interest in discharge sufficient to require a heightened standard of proof, inasmuch as (a) the clear-and-convincing-evidence standard is not required to effectuate the "fresh start" policy of the Bankruptcy Code, which limits the opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor, and (b) it is unlikely that Congress, in fashioning the standard of proof that governs the applicability of the provisions governing nondischargeability, including nondischargeability for actual fraud under 11 USCS § 523(a)(2)(A), would have favored the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud; (3) § 523(a) groups together in the same subsection a variety of exceptions to discharge without any indication that any particular exception is subject to a special standard of proof, which suggests that the legislators intended the same standard of proof—the ordinary preponderance standard—to govern the applicability of all the discharge exceptions; (4) even if most states, at the time the current Bankruptcy Code was enacted, required proof of fraud by clear and convincing evidence, this does not support the conclusion that Congress intended to adopt the clear-and-convincing standard for the fraud discharge exception; unlike many states, Congress has chosen the preponderance-of-the-evidence standard when it has created substantive causes of action for fraud, and it chose the preponderance standard to govern determinations under 11 USCS § 727(a)(4), which denies a debtor the right to discharge altogether if the debtor has committed a fraud on the Bankruptcy Court; (5) it is not reasonable to conclude that in enacting § 523 Congress silently endorsed a background rule that clear and convincing evidence is required to establish exemption from discharge, inasmuch as (a) many courts, before Congress amended the Bankruptcy Act in 1970 to make nondischargeability a question of federal law, imposed the preponderance burden on creditors invoking the fraud discharge exception, and (b) after 1970, but prior to the enactment of § 523 in 1978, the courts continued to be nearly evenly split over the appropriate standard of proof; and (6) the application of the preponderance standard will permit exception from discharge of all fraud claims which creditors have successfully reduced to judgment, which result accords with the historical development of the discharge exceptions.

Appeal § 1353 — what reviewable — decision not affecting party

2a, 2b. On certiorari to review a United States Court of Appeals decision—holding that the standard of proof necessary to establish the nondischargeability of a debt in bankruptcy under 11 USCS § 523(a) is that of clear and convincing evidence, and reversing a District Court decision that collateral estoppel required a holding that a debt, arising from a judgment entered against the debtor in an action for fraud in which the judgment creditor was required to prove fraud by only a preponderance of the evidence, was not dischargeable in bankruptcy pursuant to 11 USCS § 523(a)(2)(A) (which provides, inter alia, that a discharge in bankruptcy does not discharge an individual from any debt to the extent that such debt is obtained by "actual fraud")—the United States Supreme Court will not consider the question whether § 523(a)(2)(A) excepts from discharge that part of a judgment in excess of the actual value of money or property received by a debtor by virtue of fraud, where the debtor does not challenge the conclusion that the elements of the fraud claim proved in the action which resulted in the entry of judgment against him are sufficient to establish "fraud" within the meaning of § 523(a)(2)(A).

Bankruptcy § 15; Courts § 878; Evidence § 383 — burden of proof — governing law

3. The standard of proof that a creditor must satisfy in order to establish a valid claim against a bankrupt estate is distinct from the standard that a creditor who has established a valid claim must still satisfy in order to avoid dischargeability; the validity of a creditor's claim is determined by rules of state law, while the issue of nondischargeability is a matter of federal law governed by the terms of the Bankruptcy Code.

Judgment § 128 — collateral estoppel — bankruptcy — dischargeability of debt

4a, 4b. Collateral estoppel principles apply in proceedings to determine the dischargeability of a debt in bankruptcy under 11 USCS § 523(a); therefore, assuming that the standard of proof applicable to 11 USCS § 523(a)—which provides, inter alia, that a discharge in bankruptcy does not discharge an individual from any debt to the extent such debt is obtained by "actual fraud"—is the ordinary preponderance-of-the-evidence standard, where a creditor who has reduced a fraud claim to a valid and final judgment in a jurisdiction that requires proof of fraud by a preponderance of the evidence, or by clear and convincing evidence, makes a claim against a debtor in bankruptcy based on such judgment, a Bankruptcy Court can properly give collateral estoppel effect to those elements of the claim that are identical to the elements required for discharge and which were actually litigated and determined in the prior action for fraud.

Constitutional Law § 101 — right to discharge in bankruptcy

5. A debtor has no constitutional or fundamental right to a discharge in bankruptcy.

SYLLABUS BY REPORTER OF DECISIONS

Respondent Garner filed a petition for relief under Chapter 11 of the Bankruptcy Code, listing a fraud judgment in petitioners' favor as a dischargeable debt. Petitioners then filed a complaint in the proceeding requesting a determination that their claim should be exempted from discharge pursuant to § 523(a), which provides that a debtor may not be discharged from, inter alia, obligations for money obtained by "actual fraud." Presented with portions of the fraud case record, the Bankruptcy Court found that the elements of actual fraud under § 523 were proved and that the doctrine of collateral estoppel required a holding that the debt was not dischargeable. It and the District Court rejected Garner's argument that collateral estoppel does not apply because the fraud trial's jury instructions required that fraud be proved by a preponderance of the evidence, whereas § 523 requires proof by clear and convincing evidence. The Court of Appeals reversed, concluding that the clear-and-convincing evidence standard applies in fraud cases, since Congress would not have silently changed pre-§ 523(a) law, which generally applied the higher standard in common-law fraud litigation and in resolving dischargeability issues, and since the Code's general "fresh start" policy militated in favor of a broad construction favorable to the debtor.

Held: Preponderance of the evidence is the standard of proof for § 523(a)'s dischargeability exceptions. Neither § 523 and its legislative history nor the legislative history of § 523's predecessor prescribes a standard of proof, a silence that is inconsistent with the view that Congress intended to require a clear-and-convincing evidence standard. The preponderance standard is presumed to be applicable in civil actions between private parties unless particularly important individual interests or rights are at stake, and, in the context of the discharge exemption provisions, a debtor's interest in discharge is insufficient to require a heightened standard. Such a standard is not required to effectuate the Code's "fresh start" policy. Since the Code limits the opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor by exempting certain debts from discharge, it is unlikely that Congress would have fashioned a proof standard that favored an interest in giving the perpetrators of fraud a fresh start over an interest in protecting the victims of fraud. It is also fair to infer from § 523(a)'s structure that Congress intended the preponderance standard to apply to all of the discharge exceptions. That they are grouped together in the same subsection with no suggestion that any particular exception is subject to a special standard implies that the same standard should govern all of them, and it seems clear that a preponderance standard is sufficient to establish nondischargeability of some claims. The fact that many States required proof of fraud by clear and convincing evidence at the time the current Code was enacted does not mean that Congress silently endorsed such a rule for the fraud discharge exception. Unlike many States, Congress has chosen a preponderance standard when it has created substantive causes of action for fraud. In addition, it amended the Bankruptcy Act in 1970 to make nondischargeability a question of federal law independent of the issue of the underlying claim's validity, which is determined by state law. Moreover, both before and after 1970, courts were split over the appropriate proof standard for the fraud discharge exception. Application of the preponderance standard will also permit exception from discharge of all fraud claims creditors have reduced to judgment, a result that accords with the historical development of the discharge exceptions, which have been altered to broaden the coverage of the fraud exceptions.

881 F2d 579, reversed.

Stevens, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

Michael J. Gallagher argued the cause for petitioners.

John G. Roberts, Jr. argued the cause for the United States, et al., as amici curiae in support of petitioners, by special leave of court.

Timothy K. McNamara argued the cause for respondent.

Briefs of Counsel, p 1234, infra.

OPINION OF THE COURT

[498 US 280]

Justice **Stevens** delivered the opinion of the Court.

[1a] Section 523(a) of the Bankruptcy Code provides that a discharge in bankruptcy shall not discharge an individual debtor from certain kinds of obligations, including those for money [498 US 281] obtained by "actual fraud."[1] The question in this case is whether the statute requires a defrauded creditor to prove his claim by clear and convincing evidence in order to preserve it from discharge.

Petitioners brought an action against respondent alleging that he had defrauded them in connection with the sale of certain corporate securities. App 16-25. Following the trial court's instructions that authorized a recovery based on the preponderance of the evidence, a jury returned a verdict in favor of petitioners and awarded them actual and punitive damages. Id., at 28-29. Respondent appealed from the judgment on the verdict, and, while his appeal was pending, he filed a petition for relief under Chapter 11 of the Bankruptcy Code, listing the fraud judgment as a dischargeable debt.

The Court of Appeals for the Eighth Circuit reduced the damages award but affirmed the fraud judgment as modified. Grogan v Garner, 806 F2d 829 (1986). Petitioners then filed a complaint in the bankruptcy proceeding requesting a determination that their claim based on the fraud judgment should be exempted from discharge pursuant to § 523. App 3-4. In support of their complaint, they introduced portions of the record in the fraud case. The Bankruptcy Court found that all of the elements required to establish actual fraud under § 523 had been proved and that the doctrine of collateral estoppel required a holding that the debt was therefore not dischargeable. In re Garner, 73 BR 26 (WD Mo 1987).

[498 US 282]

[1b, 2a] Respondent does not challenge the conclusion that the elements of the fraud claim proved in the first trial are sufficient to establish "fraud" within the meaning of

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[1] Title 11 USC § 523(a) [11 USCS § 523(a)] provides, in pertinent part:

"Exceptions to discharge.

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

. . . . .

"(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

"(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition . . . ."

§ 523.[2] Instead, he has consistently argued that collateral estoppel does not apply because the jury instructions in the first trial merely required that fraud be proved by a preponderance of the evidence, whereas § 523 requires proof by clear and convincing evidence. Both the Bankruptcy Court[3] and the District Court[4] rejected this argument.

The Court of Appeals, however, reversed. In re Garner, 881 F2d 579 (1989). It recognized that the "Bankruptcy Code is silent as to the burden of proof necessary to establish an exception to discharge under section 523(a), including the exception for fraud," id. at 591, but concluded that two factors supported the imposition of a "clear and convincing" standard, at least in fraud cases. First, the court stated that the higher standard had generally been applied in both common-law fraud litigation and in resolving dischargeability

issues before § 523(a) was enacted, and reasoned that it was unlikely that Congress had intended silently to change settled law.[5] Second, the court opined that the general "fresh start" policy that undergirds the Bankruptcy Code militated in favor of a broad construction favorable to the debtor.[6]

The Eighth Circuit holding is consistent with rulings in most other Circuits,[7] but conflicts with recent decisions by the Third and Fourth Circuits.[8] The conflict, together with the importance of the issue, prompted us to grant certiorari, 495 US 918, 109 L Ed 2d 308, 110 S Ct 1945 (1990). We now reverse.

I

[3] At the outset, we distinguish

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[2] **[2b]** We therefore do not consider the question whether § 523(a)(2)(A) excepts from discharge that part of a judgment in excess of the actual value of money or property received by a debtor by virtue of fraud. See In re Rubin, 875 F2d 755, 758, n 1 (CA9 1989). Arguably, fraud judgments in cases in which the defendant did not obtain money, property, or services from the plaintiffs and those judgments that include punitive damages awards are more appropriately governed by § 523(a)(6). See 11 USC § 523(a)(6) [11 USCS § 523(a)(6)] (excepting from discharge debts "for willful and malicious injury by the debtor to another entity or to the property of another entity"); In re Rubin, 875 F2d, at 758, n 1.

[3] The Bankruptcy Court concluded that "there is no real distinction between 'preponderance of the evidence' and 'clear and convincing' as regards Section 523 litigation." In re Garner, 73 BR 26, 29 (WD Mo 1987).

[4] The District Court explained:
"A re-litigation of this case in Bankruptcy Court on the identical fact issues would be to permit the party who loses at a jury trial to have a second day in court on the same issue he and his opponent were fully heard previously. If permitted, all like cases would result in duplicitous litigation resulting in an unreasonable burden on the bankruptcy court." App to Pet for Cert 28a.

[5] "While the legislative history is scant on this issue, we feel that it is fair to presume that Congress was aware that the prevailing view at the time of adoption was that fraud, for both section 523 and state common law purposes, had to be proved by clear and convincing evidence." In re Garner, 881 F2d, at 582.

[6] "This Circuit concluded that the stricter standard was appropriate since the general policy of bankruptcy is to provide the debtor with the opportunity for a fresh start and the courts should, thereby, construe provisions of the Bankruptcy Code favoring the debtor broadly. Matter of Van Horne, 823 F2d [1285, 1287 (CA8 1987)]." Ibid.

[7] See In re Phillips, 804 F2d 930, 932 (CA6 1986); In re Kimzey, 761 F2d 421, 423-424 (CA7 1985); In re Black, 787 F2d 503, 505 (CA10 1986); Chrysler Credit Corp. v Rebhan, 842 F2d 1257, 1262 (CA11 1988); In re Hunter, 780 F2d 1577, 1579 (CA11 1986); In re Dougherty, 84 BR 653 (CA9 BAP 1988).

[8] In re Braen, 900 F2d 621 (CA3 1990); Combs v Richardson, 838 F2d 112 (CA4 1988).

between the standard of proof that a creditor must satisfy in order to establish a valid claim against a bankrupt estate and the standard that a creditor who has established a valid claim must still satisfy in order to avoid dischargeability. The validity of a creditor's claim is determined by rules of state law. See Vanston Bondholders Protective Comm. v Green, 329 US 156, 161, 91 L Ed 162, 67 S Ct 237 [498 US 284] (1946).[9] Since 1970, however, the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code. See Brown v Felsen, 442 US 127, 129-130, 136, 60 L Ed 2d 767, 99 S Ct 2205 (1979).[10]

[4a] This distinction is the wellspring from which cases of this kind flow. In this case, a creditor who reduced his fraud claim to a valid and final judgment in a jurisdiction that requires proof of fraud by a preponderance of the evidence seeks to minimize additional litigation by invoking collateral estoppel. If the preponderance standard also governs the question of nondischargeability, a bankruptcy court could properly give collateral estoppel effect to those elements of the claim that are identical to the elements required for discharge and that were actually litigated and determined in the prior action. See Restatement (Second) of Judgments § 27 (1982).[11] If, however, the clear-and-convincing standard applies [498 US 285] to nondischargeability, the prior judgment could not be given collateral estoppel effect. § 28(4). A creditor who successfully obtained a fraud judgment in a jurisdiction that requires proof of fraud by clear and convincing evidence would, however, be indifferent to the burden of proof regarding nondischargeability, because he could invoke collateral estoppel in any event.[12]

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[9] We use the term "state law" expansively herein to refer to all nonbankruptcy law that creates substantive claims. We thus mean to include in this term claims that have their source in substantive federal law, such as federal securities law or other federal antifraud laws. As the amici point out, many federal antifraud laws that may give rise to nondischargeable claims require plaintiffs to prove their right to recover only by a preponderance of the evidence. See Brief for United States et al. as Amici Curiae 1-3, and n 2.

[10] Before 1970, the bankruptcy courts had concurrent jurisdiction with the state courts to decide whether debts were excepted from discharge. In practice, however, bankruptcy courts generally refrained from deciding whether particular debts were excepted and instead allowed those questions to be litigated in the state courts. See Brown v Felsen, 442 US, at 129, 60 L Ed 2d 767, 99 S Ct 2205; 1A Collier on Bankruptcy ¶ 17.28, pp 1726-1727 (14th ed 1978). The state courts therefore determined the applicable burden of proof, often applying the same standard of proof that governed the underlying claim. The 1970 amendments took jurisdiction over certain dischargeability exceptions, including the exceptions for fraud, away from the state courts and vested jurisdiction exclusively in the bankruptcy courts. See Brown v Felsen, 442 US, at 135-136, 60 L Ed 2d 767, 99 S Ct 2205; S Rep No. 91-1173, pp 2-3 (1970); HR Rep No. 91-1502, p 1 (1970).

[11] **[4b]** Our prior cases have suggested, but have not formally held, that the principles of collateral estoppel apply in bankruptcy proceedings under the current Bankruptcy Act. See, e.g. Kelly v Robinson, 479 US 36, 48, n 8, 93 L Ed 2d 216, 107 S Ct 353 (1986); Brown v Felsen, 442 US 127, 139, n 10, 60 L Ed 2d 767, 99 S Ct 2205 (1979). Cf. Heiser v Woodruff, 327 US 726, 736, 90 L Ed 970, 66 S Ct 853 (1946) (applying collateral estoppel under an earlier version of the bankruptcy laws). Virtually every Court of Appeals has concluded that collateral estoppel is applicable in discharge exception proceedings. See In re Braen, 900 F2d, at 630; Combs v Richardson, 838 F2d, at 115; Klingman v Levinson, 831 F2d 1292, 1295 (CA7 1987); In re Shuler, 722 F2d 1253, 1256 (CA5), cert denied sub nom Harold V. Simpson & Co. v Shuler, 469 US 817, 83 L Ed 2d 32, 105 S Ct 85 (1984); Goss v Goss, 722 F2d 599, 604 (CA10 1983); Lovell v Mixon, 719 F2d 1373, 1376 (CA8 1983); Spilman v Harley, 656 F2d 224, 228 (CA6 1981). Cf. In re Rahm, 641 F2d 755, 757 (CA9) (prior judgment establishes only a prima facie case of nondischargeability), cert denied sub nom. Gregg v Rahm, 454 US 860, 70 L Ed 2d 157, 102 S Ct 313 (1981). We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).

In sum, if nondischargeability must be proved only by a preponderance of the evidence, all creditors who have secured fraud judgments, the elements of which are the same as those of the fraud discharge exception, will be exempt from discharge under collateral estoppel principles. If, however, nondischargeability must be proved by clear and convincing evidence, creditors who secured fraud judgments based only on the preponderance standard would not be assured of qualifying for the fraud discharge exception.

[498 US 286]

II

[1c] With these considerations in mind, we begin our inquiry into the appropriate burden of proof under § 523 by examining the language of the statute and its legislative history. The language of § 523 does not prescribe the standard of proof for the discharge exceptions. The legislative history of § 523 and its predecessor, 11 USC § 35 (1976 ed) [11 USCS § 35], is also silent. This silence is inconsistent with the view that Congress intended to require a special, heightened standard of proof.

[1d, 5] Because the preponderance-of-the-evidence standard results in a roughly equal allocation of the risk of error between litigants, we presume that this standard is applicable in civil actions between private litigants unless "particularly important individual interests or rights are at stake." Herman & MacLean v Huddleston, 459 US 375, 389-390, 74 L Ed 2d 548, 103 S Ct 683 (1983); see also Addington v Texas, 441 US 418, 423, 60 L Ed 2d 323, 99 S Ct 1804 (1979). We have previously held that a debtor has no constitutional or "fundamental" right to a discharge in bankruptcy. See United States v Kras, 409 US 434, 445-446, 34 L Ed 2d 626, 93 S Ct 631 (1973). We also do not believe that, in the context of provisions designed to exempt certain claims from discharge, a debtor has an interest in discharge sufficient to require a heightened standard of proof.

[1e] We are unpersuaded by the argument that the clear-and-convincing standard is required to effectuate the "fresh start" policy of the Bankruptcy Code. This Court has certainly acknowledged that a central purpose of the Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." Local Loan Co. v Hunt, 292 US 234, 244, 78 L Ed 1230, 54 S Ct 695, 93 ALR 195 (1934). But in the same breath that we have invoked this

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[12] This indifference would not be shared, however, by a creditor who either did not try, or tried *unsuccessfully,* to prove fraud in a jurisdiction requiring clear and convincing evidence but who nonetheless established a valid claim by proving, for example, a breach of contract involving the same transaction. See, e.g., In re Black, 787 F2d 503 (CA10 1986); In re Rubin, 875 F2d, at 758, n 1.

"fresh start" policy, we have been careful to explain that the Act **[498 US 287]** limits the opportunity for a completely unencumbered new beginning to the "honest but unfortunate debtor." Ibid.

The statutory provisions governing nondischargeability reflect a congressional decision to exclude from the general policy of discharge certain categories of debts—such as child support, alimony, and certain unpaid educational loans and taxes, as well as liabilities for fraud. Congress evidently concluded that the creditors' interest in recovering full payment of debts in these categories outweighed the debtors' interest in a complete fresh start. We think it unlikely that Congress, in fashioning the standard of proof that governs the applicability of these provisions, would have favored the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud. Requiring the creditor to establish by a preponderance of the evidence that his claim is not dischargeable reflects a fair balance between these conflicting interests.

III

[1f] Our conviction that Congress intended the preponderance standard to apply to the discharge exceptions is reinforced by the structure of § 523(a),[13] which groups together in the same subsection a variety of exceptions without any indication that any particular exception is subject to a special standard of proof. The omission of any suggestion that different exemptions have different burdens of proof implies that the legislators intended the same standard to govern the nondischargeability under § 523(a)(2) of fraud claims and, for example, the nondischargeability under § 523(a)(5) of claims for child support and alimony. Because it seems clear that a preponderance **[498 US 288]** of the evidence is sufficient to establish the nondischargeability of some of the types of claims covered by § 523(a),[14] it is fair to infer that Congress intended the ordinary preponderance standard to govern the applicability of all the discharge exceptions.

We are therefore not inclined to accept respondent's contention that application of the ordinary preponderance standard to the fraud exception is inappropriate because, at the time Congress enacted the current Bankruptcy Code, the majority of States required proof of fraud by clear and convincing evidence.[15] Even if we believed that Congress had contemplated the application of different burdens of proof for different exceptions, the fact that most States required fraud claims to be proved by clear and convincing evidence would not support the conclusion that *Congress* intended to adopt the clear-and-convincing standard for the fraud *discharge* exception.

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[13] See Crandon v United States, 494 US 152, 158, 108 L Ed 2d 132, 110 S Ct 997 (1990) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy"); K mart Corp. v Cartier, Inc. 486 US 281, 291, 100 L Ed 2d 313, 108 S Ct 1811 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole").

[14] For example, § 523(a) provides for the nondischargeability of debts not only for child support and alimony, but also for certain fines and penalties, educational loans, and tax obligations. See 11 USC §§ 523(a)(1), (5), (7), (8) [11 USCS §§ 523(a)(1), (5), (7), (8)].

[15] Respondent claims that the vast majority of States applied the heightened standard. See Brief for Respondent 8-14. Petitioners and the amici acknowledge that the clear-and-convincing standard applied in many jurisdictions but contend that respondent overstates the number of States that required the heightened standard. See Brief for Petitioners 17-20, and n 1; Brief for United States et al. as Amici Curiae 21-25. Resolution of this dispute is not necessary for our decision.

Unlike a large number, and perhaps the majority, of the States, Congress has chosen the preponderance standard when it has created substantive causes of action for fraud. See, e.g., 31 USC § 3731(c) [31 USCS § 3731(c)] (False Claims Act); 12 USC § 1833a(e) (1988 ed, Supp I) [12 USCS § 1833a(e)] (civil penalties for fraud involving financial institutions); 42 CFR § 1003.114(a) (1989) (Medicare and Medicaid fraud under 42 USC § 1320a-7a [42 USCS § 1320a-7a]); Herman & MacLean v Huddleston, 459 US, at 388-390, 74 L Ed 2d 548, 103 S Ct 683 (civil enforcement of the antifraud provisions of

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the securities laws); Steadman v SEC, 450 US 91, 96, 67 L Ed 2d 69, 101 S Ct 999 (1981) (administrative proceedings concerning violation of antifraud provisions of the securities laws); SEC v C. M. Joiner Leasing Corp. 320 US 344, 355, 88 L Ed 88, 64 S Ct 120 (1943) (§ 17(a) of the Securities Act of 1933); First National Monetary Corp. v Weinberger, 819 F2d 1334, 1341-1342 (CA6 1987) (civil fraud provisions of the Commodity Exchange Act). Cf. Sedima, S. P. R. L. v Imrex Co., 473 US 479, 491, 87 L Ed 2d 346, 105 S Ct 3275 (1985) (suggesting that the preponderance standard applies to civil actions under the Racketeer Influenced and Corrupt Organizations Act). Most notably, Congress chose the preponderance standard to govern determinations under 11 USC § 727(a)(4) [11 USCS § 727(a)(4)], which denies a debtor the right to discharge altogether if the debtor has committed a fraud on the bankruptcy court. See HR Rep No. 95-595, p 384 (1977) ("The fourth ground for denial of discharge is the commission of a bankruptcy crime, though the standard of proof is preponderance of the evidence"); S Rep No. 95-989, p 98 (1978) (same).[16]

Moreover, as we explained in Part I, supra, Congress amended the Bankruptcy Act in 1970 to make nondischargeability a question of federal law independent of the issue of the validity of the underlying claim. Even before 1970, many courts imposed the preponderance burden on creditors invoking the fraud discharge exception. See, e.g., Sweet v Ritter Finance Co., 263 F Supp 540, 543 (WD Va 1967); Nickel Plate Cloverleaf Federal Credit Union v White, 120 Ill App 2d 91, 93-94, 256 NE2d 119, 120-121 (1970); Gonzales v Aetna Finance Co., 86 Nev 271, 275, 468 P2d 15, 18 (1970); Beneficial Finance Co. of Manchester v Machie, 6 Conn Cir 37, 41, 263 A2d 707, 710 (1969); Budget Finance Plan v Haner, 92 Idaho 56, 59, 436 P2d 722, 725

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(1968); Atlas Credit Corp. v Miller, 216 So 2d 100, 101 (La Ct App 1968); Household Finance Corp v Altenberg, 5 Ohio St 2d 190, 193, 214 NE2d 667, 669 (1966); MAC Finance Plan of

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[16] Prior to the enactment of the 1978 Bankruptcy Code, the courts of appeals had held that the preponderance standard applied in this situation. See e.g., In re Robinson, 506 F2d 1184, 1187 (CA2 1974); Union Bank v Blum, 460 F2d 197, 200-201 (CA9 1972).

Nashua, Inc. v Stone, 106 NH 517, 521-522, 214 A2d 878, 882 (1965). And, following the 1970 amendments, but prior to the enactment of § 523 in 1978, the courts continued to be nearly evenly split over the appropriate standard of proof. Compare, e.g., Fierman v Lazarus, 361 F Supp 477, 480 (ED Pa 1973); In re Scott, 1 BCD 581, 583 (Bkrtcy Ct WD Mich 1975), with Brown v Buchanan, 419 F Supp 199, 203 (ED Va 1975); In re Arden, 75 BR 707, 710 (Bkrtcy Ct RI 1975). Thus, it would not be reasonable to conclude that in enacting § 523, Congress silently endorsed a background rule that clear and convincing evidence is required to establish exemption from discharge.

IV

[1g] A final consideration supporting our conclusion that the preponderance standard is the proper one is that, as we explained in Part I, supra, application of that standard will permit exception from discharge of all fraud claims creditors have successfully reduced to judgment. This result accords with the historical development of the discharge exceptions. As we explained in Brown v Felsen, the 1898 Bankruptcy Act provided that "judgments" sounding in fraud were exempt from discharge. 30 Stat 550. In the 1903 revisions, Congress substituted the term "liabilities" for "judgments." 32 Stat 798. This alteration was intended to broaden the coverage of the fraud exceptions. See Brown v Felsen, 442 US, at 138, 60 L Ed 2d 767, 99 S Ct 2205. Absent a clear indication from Congress of a change in policy, it would be inconsistent with this earlier expression of congressional intent to construe the exceptions to allow some debtors facing fraud judgments to have those judgments discharged.

For these reasons, we hold that the standard of proof for the dischargeability exceptions in 11 USC § 523(a) [11 USCS § 523(a)] is the ordinary preponderance-of-the-evidence standard.

The judgment of the Court of Appeals is reversed.

It is so ordered.

MEMORANDUM CASES

No. 90-142. James C. Dunkel, Petitioner v United States

498 US 1043, 112 L Ed 2d 768, 111 S Ct 747.

January 14, 1991. On petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of Cheek v United States, 498 US 192, 112 L Ed 2d 617, 111 S Ct 604 (1991).

Same case below, 900 F2d 105.

No. A-474. Jerry R. Williams, Applicant v Charlene Knight Faucett, et al.

498 US 1043, 112 L Ed 2d 768, 111 S Ct 747.

January 14, 1991. The application for stay, addressed to Justice O'Connor, and referred to the Court, is denied.

No. A-516. Caleb Daniel Hughes, Applicant v The Washington Post Company

498 US 1043, 112 L Ed 2d 768, 111 S Ct 747.

January 14, 1991. The application for further stay of the mandate of the United States Court of Appeals for the Fourth Circuit, presented to The Chief Justice, and by him referred to the Court, is granted pending the timely filing and disposition of a petition for a writ of certiorari. If the petition for a writ of certiorari is denied, this order is to terminate automatically. In the event the petition for a writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court.

No. D-960. In the Matter of Disbarment of Kenneth Lynn Broadhurst

498 US 1044, 112 L Ed 2d 768, 111 S Ct 747.

January 14, 1991. It is ordered that Kenneth Lynn Broadhurst, of Englewood, Colorado, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-961. In the Matter of Disbarment of Theodore A. Miller

498 US 1044, 112 L Ed 2d 768, 111 S Ct 747.

January 14, 1991. It is ordered

that Theodore A. Miller, of Green Bay, Wisconsin, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-962. In the Matter of Disbarment of Leonard Rubin

498 US 1044, 112 L Ed 2d 769, 111 S Ct 748.

January 14, 1991. It is ordered that Leonard Rubin, of Watchung, New Jersey, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-963. In the Matter of Disbarment of Paul Gordon Henderson

498 US 1044, 112 L Ed 2d 769, 111 S Ct 748.

January 14, 1991. It is ordered that Paul Gordon Henderson, of Baltimore, Maryland, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-964. In the Matter of Disbarment of Howard Alan Levine

498 US 1044, 112 L Ed 2d 769, 111 S Ct 748.

January 14, 1991. It is ordered that Howard Alan Levine, of Oklahoma City, Oklahoma, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 89-1714. Harriet Pauley, Survivor of John C. Pauley, Petitioner v BethEnergy Mines, Inc., et al.

No. 90-113. Clinchfield Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

No. 90-114. Consolidation Coal Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

498 US 1044, 112 L Ed 2d 769, 111 S Ct 748.

January 14, 1991. The motion of the Solicitor General for divided argument is granted. The request of the claimants to be designated as respondents for purposes of oral argument is granted. Justice Kennedy took no part in the consideration or decision of these motions.

No. 89-1944. Ohio, Petitioner v Edliberto Huertas

498 US 1045, 112 L Ed 2d 770, 111 S Ct 749.

January 14, 1991. The motion of National Jury Project for leave to file a brief as amicus curiae is granted.

No. 90-285. Litton Financial Printing Division, a Division of Litton Business Systems, Inc., Petitioner v National Labor Relations Board, et al.

498 US 1045, 112 L Ed 2d 770, 111 S Ct 749.

January 14, 1991. The motion of the Solicitor General for divided argument is granted.

No. 90-644. James G. Ledbetter, Commissioner, Georgia Department of Human Resources, Petitioner v Mata O. Turner, et al.

498 US 1045, 112 L Ed 2d 770, 111 S Ct 749.

January 14, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-5744. Richard L. Chapman, John M. Schoenecker, and Patrick Brumm, Petitioners v United States

498 US 1045, 112 L Ed 2d 770, 111 S Ct 750.

January 14, 1991. The motion for appointment of counsel is granted, and it is ordered that T. Christopher Kelly, Esquire, of Madison, Wisconsin, be appointed to serve as counsel for the petitioners in this case.

No. 89-1905. Wisconsin Public Intervenor, et al., Petitioners v Ralph Mortier, et al.

498 US 1045, 112 L Ed 2d 770, 111 S Ct 750.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Wisconsin granted.

Same case below, 154 Wis 2d 18, 452 NW2d 555.

No. 90-34. Exxon Corporation, Petitioner v Central Gulf Lines, Inc., et al.

498 US 1045, 112 L Ed 2d 770, 111 S Ct 750.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 904 F2d 33.

No. 90-906. Metropolitan Washington Airports Authority, et al., Petitioners v Citizens for the Abatement of Aircraft Noise, Inc., et al.

498 US 1045, 112 L Ed 2d 770, 111 S Ct 750.

January 14, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the District of Columbia Circuit granted.

Same case below, 286 App DC 334, 917 F2d 48.

No. 90-769. Louise H. Renne, San Francisco City Attorney, et al., Petitioners v Bob Geary, et al.

498 US 1046, 112 L Ed 2d 771, 111 S Ct 750.

January 14, 1991. The motion of California Judges Association for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 911 F2d 280.

No. 90-6282. Daniel Touby, et ux., Petitioners v United States

498 US 1046, 112 L Ed 2d 771, 111 S Ct 751.

January 14, 1991. Motion of petitioners for leave to proceed in forma pauperis and petition for writ of certiorari to the United States Court of Appeals for the Third Circuit granted.

Same case below, 909 F2d 759.

No. 89-6214. Maria del Socorro Pardo, Viuda De Aguilar, et al., Petitioners v United States

498 US 1046, 112 L Ed 2d 771, 111 S Ct 751.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 883 F2d 662.

No. 89-7332. Robert W. Mitzel, Petitioner v Ohio

498 US 1046, 112 L Ed 2d 771, 111 S Ct 751.

January 14, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Trumbull County, denied.

No. 90-205. Marvin J. Gerstin, et al., Petitioners v Girardeau A. Spann, et al.

498 US 1046, 112 L Ed 2d 771, 111 S Ct 751.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 283 App DC 216, 899 F2d 24.

No. 90-435. Edwin W. Hammond, Petitioner v United States

498 US 1046, 112 L Ed 2d 771, 111 S Ct 751.

January 14, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1142.

No. 90-453. Rory Doremus, Petitioner v United States

No. 90-466. David Doremus, Petitioner v United States

498 US 1046, 112 L Ed 2d 772, 111 S Ct 751, 111 S Ct 752.

January 14, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same cases below, 888 F2d 630.

No. 90-486. Lowell Saylor, et al., Petitioners v Oregon, et al.

498 US 1046, 112 L Ed 2d 772, 111 S Ct 752.

January 14, 1991. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 100 Or App 745, 788 P2d 494.

No. 90-493. David O. Conger, et al., Petitioners v International Brotherhood of Electrical Workers, Local 199, AFL-CIO, et al.

498 US 1046, 112 L Ed 2d 772, 111 S Ct 752.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 979.

No. 90-504. Fleet Factors Corp., Petitioner v United States

498 US 1046, 112 L Ed 2d 772, 111 S Ct 752.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 901 F2d 1550.

No. 90-563. Kathleen Rowland Swan, et vir, Petitioners v Washington

498 US 1046, 112 L Ed 2d 772, 111 S Ct 752.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Washington denied.

Same case below, 114 Wash 2d 613, 790 P2d 610.

No. 90-581. Francis J. Thompson, et al., Petitioners v British Airways, Inc., et al.

498 US 1047, 112 L Ed 2d 772, 111 S Ct 752.

January 14, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 79, 901 F2d 1131.

No. 90-600. J. D. Farmer, Jr., Petitioner v Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1041.

No. 90-636. Peter Malcolm Davis, Petitioner v United States

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 245.

No. 90-717. Ray N. Jackson, Petitioner v General Dynamics Corporation

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753.

January 14, 1991. Petition for writ of certiorari to the Court of Appeals of Texas, Second Distirct, denied.

No. 90-730. Jerry Ladner, Petitioner v Joyce Elizabeth Daniels Johnson, et al.

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Mississippi denied.

Same case below, 563 So 2d 1368.

No. 90-752. Roger F. Winchester, Petitioner v County of San Diego, et al.

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753, reh den (US) 113 L Ed 2d 271, 111 S Ct 1340.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-758. David Enix, et al., Petitioners v Dayton Women's Health Center, Inc., et al.

498 US 1047, 112 L Ed 2d 773, 111 S Ct 753.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 52 Ohio St 3d 67, 555 NE2d 956.

No. 90-765. Lexington Herald-Leader Company, et al., Petitioners v Reggie Warford

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Kentucky denied.

Same case below, 789 SW2d 758.

No. 90-766. George A. Guess, Petitioner v North Carolina Board of Medical Examiners

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of North Carolina denied.

Same case below, 327 NC 46, 393 SE2d 833.

No. 90-771. Oliver H. Claypool, Jr., et al., Petitioners v Flora B. Boyd, Individually and as Warden, Stevenson Correctional Institution, et al.

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1490.

No. 90-773. South Ridge Baptist Church, Petitioner v Industrial Commission of Ohio, et al.

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 1203.

No. 90-776. Delco L. Cornett, Petitioner v Manufacturers Hanover Trust Company, et al.

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 902 F2d 1556.

No. 90-777. Jerry Lee Harvey, Petitioner v United States

498 US 1047, 112 L Ed 2d 774, 111 S Ct 754, reh den (US) 115 L Ed 2d 990, 111 S Ct 2818.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 900 F2d 1253.

No. 90-779. Quentin L. Breen, Petitioner v Commissioner of Internal Revenue

498 US 1048, 112 L Ed 2d 774, 111 S Ct 755.

January 14, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 737.

No. 90-780. Edward DeSantis, et al., Petitioners v Wackenhut Corporation

498 US 1048, 112 L Ed 2d 775, 111 S Ct 755.

January 14, 1991. Petiton for writ of certiorari to the Supreme Court of Texas denied.

Same case below, 793 SW2d 670.

No. 90-784. Stephanie Kennedy, Petitioner v County of Los Angeles, et al.

498 US 1048, 112 L Ed 2d 775, 111 S Ct 755.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-789. Jerry Hegedus, Petitioner v Joanne Limbach, Ohio Tax Commissioner

498 US 1048, 112 L Ed 2d 775, 111 S Ct 755.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1571.

No. 90-790. Matthew Setera, Petitioner v John Temme, et al.

498 US 1048, 112 L Ed 2d 775, 111 S Ct 755.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-794. Armando Fong Najarro, et al., Petitioners v Suzanne Frame, et al.

498 US 1048, 112 L Ed 2d 775, 111 S Ct 755.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 1002.

No. 90-796. Pocono Green, Inc., Petitioner v Board of Supervisors of Kidder Township (Carbon County), Pennsylvania

498 US 1048, 112 L Ed 2d 775, 111 S Ct 756.

January 14, 1991. Petition for writ

of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

Same case below, 523 Pa 601, 568 A2d 612.

No. 90-800. James O. Blackshire, Jr., Petitioner v Monika M. Blackshire

498 US 1048, 112 L Ed 2d 776, 111 S Ct 756.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

No. 90-801. Eric N. Person, Petitioner v Connecticut

498 US 1048, 112 L Ed 2d 776, 111 S Ct 756.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 215 Conn 653, 577 A2d 1036.

No. 90-804. Allen L. Feingold, Petitioner v Disciplinary Board of Pennsylvania

498 US 1048, 112 L Ed 2d 776, 111 S Ct 756.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Eastern District, denied.

No. 90-814. Ashley Elliott, Petitioner v Mercury Marine

498 US 1048, 112 L Ed 2d 776, 111 S Ct 756.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 1505.

No. 90-820. Jack R. Whitehorn, et ux., Petitioners v Margaret H. Murphy, et al.

498 US 1048, 112 L Ed 2d 776, 111 S Ct 756.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 471.

No. 90-837. Domingo Antonio Lagos, Petitioner v United States

498 US 1048, 112 L Ed 2d 776, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-852. Johnny Lee Asher, Petitioner v Arkansas

498 US 1048, 112 L Ed 2d 777, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 303 Ark 202, 795 SW2d 350.

No. 90-860. Elizabeth Aiello, Petitioner v United States

498 US 1048, 112 L Ed 2d 777, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 912 F2d 4.

No. 90-861. Carroll Lamar Wiginton, Petitioner v United States

498 US 1049, 112 L Ed 2d 777, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 254.

No. 90-876. Rolando Thomas Alayon, Petitioner v Minnesota

498 US 1049, 112 L Ed 2d 777, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Minnesota denied.

Same case below, 459 NW2d 325.

No. 90-930. Anthony Bartels, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 1049, 112 L Ed 2d 777, 111 S Ct 757.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1578.

No. 90-938. Glenn Gunn, et al., Petitioners v Frank Palmieri, et al.

498 US 1049, 112 L Ed 2d 777, 111 S Ct 758.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 33.

No. 90-5621. Thomas Lee Capps, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1049, 112 L Ed 2d 778, 111 S Ct 758.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 900 F2d 58.

No. 90-5701. Lawrence Arnolie, Jr., Petitioner v Secretary of the Navy

498 US 1049, 112 L Ed 2d 778, 111 S Ct 758, reh den (US) 113 L Ed 2d 232, 111 S Ct 1124.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 900 F2d 262.

No. 90-5769. Murl Edward McMullin, Petitioner v Crispus Nix, Warden

498 US 1049, 112 L Ed 2d 778, 111 S Ct 758.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 314.

No. 90-5923. Edward Cardona, Petitioner v United States

498 US 1049, 112 L Ed 2d 778, 111 S Ct 758.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 903 F2d 60.

No. 90-5947. Ronald Bradley Hatcher, Howard Steven Sears, and Larry Dale Keaton, Petitioners v United States

498 US 1049, 112 L Ed 2d 778, 111 S Ct 758.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 905 F2d 784.

No. 90-5952. Tony Sutton, Petitioner v United States

498 US 1049, 112 L Ed 2d 778, 111 S Ct 759.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-5982. Lawrence Louis Levy, Petitioner v United States

498 US 1049, 112 L Ed 2d 778, 111 S Ct 759.

January 14, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 905 F2d 326, 112 ALR Fed 807.

No. 90-6022. James Donald Smith, Petitioner v United States

498 US 1049, 112 L Ed 2d 779, 111 S Ct 759.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1480.

No. 90-6090. Curtis Drummond, Petitioner v United States

498 US 1049, 112 L Ed 2d 779, 111 S Ct 759.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 903 F2d 1171.

No. 90-6153. Harry Bout, Petitioner v Robert M. Harrison, et al.

498 US 1049, 112 L Ed 2d 779, 111 S Ct 759.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 255.

No. 90-6173. Francis N. Bienville, Petitioner v United States

498 US 1049, 112 L Ed 2d 779, 111 S Ct 759, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 897 F2d 539.

No. 90-6189. George Srubar, Petitioner v United States

498 US 1049, 112 L Ed 2d 779, 111 S Ct 760, reh den (US) 113 L Ed 2d 232, 111 S Ct 1124.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6202. Samuel Lee Murray, III, Petitioner v Mississippi Department of Corrections, et al.

498 US 1050, 112 L Ed 2d 779, 111 S Ct 760.

January 14, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 1167.

No. 90-6205. Luke Aaron Scott, Petitioner v California

498 US 1050, 112 L Ed 2d 780, 111 S Ct 760, reh den (US) 113 L Ed 2d 232, 111 S Ct 1124.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeal of California, First Appellate District, denied.

No. 90-6210. Lucio A. Barroga, Petitioner v United States Patent and Trademark Office

498 US 1050, 112 L Ed 2d 780, 111 S Ct 760.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 914 F2d 270.

No. 90-6232. Jerry Wayne Moore, Petitioner v Fred W. Green, Warden

498 US 1050, 112 L Ed 2d 780, 111 S Ct 760.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 463.

No. 90-6235. Robert Leo Oswald, Petitioner v Supreme Court of Michigan

498 US 1050, 112 L Ed 2d 780, 111 S Ct 760.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 920 F2d 933.

No. 90-6239. Theodis Brown, Sr., Petitioner v Bi-State Development Agency, et al.

498 US 1050, 112 L Ed 2d 780, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1579.

No. 90-6242. Brian Vukadinovich, Petitioner v Michael Krawczyk, et al.

498 US 1050, 112 L Ed 2d 780, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 901 F2d 1439.

No. 90-6243. Chad Christopher Lund, Petitioner v Illinois

498 US 1050, 112 L Ed 2d 781, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, Fourth District, denied.

Same case below, 198 Ill App 3d 1110, 584 NE2d 1082.

No. 90-6245. Steve Varvaris, Petitioner v Jean Kountouris, et al.

498 US 1050, 112 L Ed 2d 781, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 1569.

No. 90-6248. Marion Johnson, Petitioner v United States

498 US 1050, 112 L Ed 2d 781, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 911 F2d 1394.

No. 90-6251. Joel Gaytan, Petitioner v California

498 US 1050, 112 L Ed 2d 781, 111 S Ct 761.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-6254. Robert Ziegler, Petitioner v Ron Champion, Warden

498 US 1050, 112 L Ed 2d 781, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6255. James Welch, Petitioner v Victoria Jolley, et al.

498 US 1050, 112 L Ed 2d 781, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 988.

No. 90-6257. Paul A. Rupe, Petitioner v Metropolitan Life Insurance Company, et al.

498 US 1050, 112 L Ed 2d 781, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 977.

No. 90-6262. Norman Keith Chase, Petitioner v F. William Honsowetz, P.C.

498 US 1051, 112 L Ed 2d 782, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

No. 90-6268. Carlos F. Meneses, Petitioner v Robert E. Stephens, Administrator, Northern State Prison, et al.

498 US 1051, 112 L Ed 2d 782, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 244.

No. 90-6271. Larry Gene Race, Petitioner v Orville B. Pung, Commissioner, Minnesota Department of Corrections, et al.

498 US 1051, 112 L Ed 2d 782, 111 S Ct 762.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 907 F2d 83.

No. 90-6274. John Robert Demos, Jr., Petitioner v United States District Court for the Western District of Washington

498 US 1051, 112 L Ed 2d 782, 111 S Ct 763.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6277. Stanley Sanders, Petitioner v North Carolina

498 US 1051, 112 L Ed 2d 782, 111 S Ct 763.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of North Carolina denied.

Same case below, 327 NC 319, 395 SE2d 412.

No. 90-6278. Rodney A. Revere, Petitioner v Estate of Doris Jean Fishel Revere

498 US 1051, 112 L Ed 2d 782, 111 S Ct 763.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 568 So 2d 1060.

No. 90-6280. Johnny Mack Young, Petitioner v W. E. Johnson, Warden

498 US 1051, 112 L Ed 2d 783, 111 S Ct 763, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 721.

No. 90-6281. Jirik Parez, Petitioner v Sergio Luis Lopez, et al.

498 US 1051, 112 L Ed 2d 783, 111 S Ct 763.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-6283. Jerry Wayne Smith, et al., Petitioners v Bert R. Mohs, Assistant Superintendent, Minnesota Correctional Facility

498 US 1051, 112 L Ed 2d 783, 111 S Ct 763.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6285. Jack Frost, Petitioner v California, et al.

498 US 1051, 112 L Ed 2d 783, 111 S Ct 764, reh den (US) 113 L Ed 2d 232, 111 S Ct 1125.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-6293. Annette Johnson, Petitioner v United States

498 US 1051, 112 L Ed 2d 783, 111 S Ct 764.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 910 F2d 1506.

No. 90-6330. Charlotte Hurd, Petitioner v Desert Hospital, et al.

498 US 1051, 112 L Ed 2d 783, 111 S Ct 764.

January 14, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-6338. J. C. Armstrong, Jr., Petitioner v St. Petersburg Times, et al.

498 US 1051, 112 L Ed 2d 783, 111 S Ct 764.

January 14, 1991. Petition for writ

of certiorari to the Supreme Court of Florida denied.

Same case below, 564 So 2d 1085.

No. 90-6358. John K. Guedel, Petitioner v Commissioner of Internal Revenue

498 US 1052, 112 L Ed 2d 784, 111 S Ct 764.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 1578.

No. 90-6359. Russell A. Muth, Jr., Petitioner v Central Bucks School District, et al.

498 US 1052, 112 L Ed 2d 784, 111 S Ct 764, reh den (US) 113 L Ed 2d 233, 111 S Ct 1125.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 911 F2d 719.

No. 90-6362. Brenda Groholski, Petitioner v United States

498 US 1052, 112 L Ed 2d 784, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 692.

No. 90-6366. Bonita C. Pieper, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services

498 US 1052, 112 L Ed 2d 784, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 710.

No. 90-6376. Lamar Fletcher, Petitioner v Memphis Police Department, et al.

498 US 1052, 112 L Ed 2d 784, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6419. Chris Hansen, Petitioner v United States Parole Commission

498 US 1052, 112 L Ed 2d 784, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 306.

No. 90-6431. Dennis Groholski, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 692.

No. 90-6436. Joseph Brown, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 765.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 522.

No. 90-6437. Coval Baker, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 522.

No. 90-6438. Delroy Edwards, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 708.

No. 90-6439. Sam Edward Jones, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 913 F2d 174.

No. 90-6442. Maria Montalvo, Petitioner v United States

498 US 1052, 112 L Ed 2d 785, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 720.

No. 90-6447. Alex Beverly, Petitioner v United States

498 US 1052, 112 L Ed 2d 786, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 913 F2d 337.

No. 90-6454. Jimmy Doyle Hindman, Petitioner v United States

498 US 1052, 112 L Ed 2d 786, 111 S Ct 766.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 249.

No. 90-6458. Edward Nolen, Petitioner v United States

498 US 1052, 112 L Ed 2d 786, 111 S Ct 767.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6459. Nelson Hernandez-Avila, Petitioner v United States

498 US 1053, 112 L Ed 2d 786, 111 S Ct 767.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-609. Reichhold Chemicals, Inc., Petitioner v Teamsters Local Union No. 515, Affiliated With the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, et al.

498 US 1053, 112 L Ed 2d 786, 111 S Ct 767.

January 14, 1991. The motion of Capital Associated Industries, Inc. for leave to file a brief as amicus curiae is granted. The motion of Carpet and Rug Institute for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 285 App DC 25, 906 F2d 719.

No. 90-618. Toledo Blade Company, Petitioner v Toledo Typographical Union No. 63, et al.

498 US 1053, 112 L Ed 2d 786, 111 S Ct 767.

January 14, 1991. The motion of petitioner for leave to intervene in order to file petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 285 App DC 214, 907 F2d 1220.

No. 90-761. Chopin Associates, et al., Petitioners v Fred Stanton Smith, Trustee, Bank of New York, et al.

498 US 1053, 112 L Ed 2d 787, 111 S Ct 767.

January 14, 1991. The motion of petitoners to defer consideration of the petition for a writ of certiorari is denied. Petiton for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 268.

No. 90-933. Nationalist Movement, Petitioner v City of Cumming, et al.

498 US 1053, 112 L Ed 2d 787, 111 S Ct 767.

January 14, 1991. The motion of petitioner for leave to proceed in forma pauperis is denied. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 913 F2d 885.

No. 90-5961. Leroy Pletten, Petitioner v Merit Systems Protection Board, et al.

498 US 1053, 112 L Ed 2d 787, 111 S Ct 768, reh den (US) 113 L Ed 2d 232, 111 S Ct 1124.

January 14, 1991. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The motion of petitioner to strike brief in opposition is denied. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 973.

No. 90-6047. Thaddaeus Louis Turner, Petitioner v California

498 US 1053, 112 L Ed 2d 787, 111 S Ct 768.

January 14, 1991. The petition for a writ of certiorari to the Supreme Court of California is denied.

Same case below, 50 Cal 3d 668, 268 Cal Rptr 706, 789 P2d 887.

Justice Marshall, dissenting.

Petitioner was convicted in California state court of first-degree murder and sentenced to death. On appeal, he argued that application of the death penalty in this case was arbitrary because it was excessive when compared with penalties imposed in similar cases. The California Supreme Court noted that petitioner "present[ed] an elaborate survey of published [California] Court of Appeal decisions to demonstrate the hypothesis that many first degree murderers of equal or greater culpability have received sentences less than death." 50 Cal 3d 668, 718, 789 P2d 887, 916 (1990). However, the State Supreme Court refused to review petitioner's submissions, declaring that "[c]omparative proportionality review is not constitutionally required." Ibid. Although the court cited its own prior decisions for that conclusion, ibid., those precedents ultimately derive from this Court's opinion in Pulley v Harris, 465 US 37, 79 L Ed 2d 29, 104 S Ct 871 (1984). See People v Rodriguez, 42 Cal 3d 730, 778, 726 P2d 113, 143-144 (1986) (relying on Pulley in rejecting proportionality review). In Pulley, the Court sustained California's capital punishment statute against Eighth Amendment attack, rejecting the claim that the "Eighth Amendment . . . requires a state appellate court, before it affirms a death sentence, to compare the sentence in the case before it with the penalties imposed in similar cases if requested to do so by the prisoner." 465 US, at 43-44, 79 L Ed 2d 29, 104 S Ct 871.

I dissented from the decision in Pulley, and I continue to believe that it was wrongly decided. The singling out of particular defendants for the death penalty when their crimes are no more aggravated than those committed by numerous other defendants given lesser sentences is unacceptable. As Justice Brennan pointed out in his dissent in Pulley, comparative proportionality review, at the very least, "serves to eliminate some of the irrationality that currently surrounds imposition of a death sentence" and "can be administered without much difficulty by a court of statewide jurisdiction." 465 US, at 71, 79 L Ed 2d 29, 104 S Ct 871. In the present case, petitioner has not merely "requested" review for comparative proportionality, cf. id., at 44, 79 L Ed 2d 29, 104 S Ct 871, but has (in the lower court's own words) "present[ed] an elaborate survey of published Court of Appeal decisions," allegedly showing that "many first degree murderers of equal and greater culpability have received sentences less than death." 50 Cal 3d, at 718, 789 P2d, at 916. I cannot understand how this Court can reconcile a refusal to review such evidence with our capital jurisprudence.

As we have often recognized, "[b]ecause of the uniqueness of the death penalty, . . . it [cannot] be imposed under sentencing procedures that creat[e] a substantial risk that it would be inflicted in an arbitrary and capricious manner." Gregg v Georgia, 428 US 153, 188, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). Indeed, we have "insiste[d] that capital punishment be imposed fairly, and with reasonable consistency, or not at all." Eddings v Oklahoma, 455 US 104, 112, 71 L Ed 2d 1, 102 S Ct 869 (1982). The allegation in this petition, accompanied by a proffer of significant evidence, is that the death sentence imposed upon petitioner was not "fair" precisely because it was not "consistent." The refusal even to consider petitioner's evidence surely "creates a substantial risk" that "arbitrary and capricious" capital punishment will result. I would hope that the Court would reexamine its views on this matter. This petition should be granted and the case remanded for an examination of petitioner's submissions.

Even if I did not believe that failure to consider petitioner's evidence on the issue of proportionality violated the Eighth Amendment, I would grant the petition and vacate the sentence below, adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. Gregg v Georgia, supra, at

231, 49 L Ed 2d 859, 96 S Ct 2909 (Marshall, J., dissenting).

No. 90-6077. Richard Oxford, Petitioner v Missouri

498 US 1055, 112 L Ed 2d 789, 111 S Ct 769.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 791 SW2d 396.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6119. Calvert Leon Antwine, Petitioner v Missouri

498 US 1055, 112 L Ed 2d 789, 111 S Ct 769.

January 14, 1991. Petition for writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 791 SW2d 403.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6228. Justin Lee May, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1055, 112 L Ed 2d 789, 111 S Ct 770.

January 14, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 228.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6371 (A-275). Frank D. Rodriguez, Petitioner v Colorado

498 US 1055, 112 L Ed 2d 789, 111 S Ct 770.

January 14, 1991. The application for stay of execution of sentence of death, presented to Justice White, and by him referred to the Court, is denied. The petition for a writ of certiorari to the Supreme Court of Colorado is denied.

Same case below, 794 P2d 965.

Justice Marshall, dissenting.

In both Mills v Maryland, 486 US 367, 100 L Ed 2d 384, 108 S Ct 1860 (1988), and McKoy v North Carolina, 494 US 433, 108 L Ed 2d 369, 110 S Ct 1227 (1990), we vacated death sentences based on jury instructions that, reasonably construed, prevented the respective juries from considering any mitigating factors they did not unanimously find to exist. Because I believe that the instructions delivered to the jury in this case cannot be squared with Mills and McKoy, I would grant the application for stay and the petition for certiorari.

I

Petitioner was convicted of murder and sentenced to death. At the penalty phase of petitioner's trial, the trial court instructed the jury that any aggravating factors found to exist should be weighed against any mitigating factors found to exist. Instruction No. 21 explained in pertinent part:

> "If in the first two steps of your deliberations you have made *unanimous findings* that the prosecution has proven beyond a reasonable doubt that one or more aggravating factors exist and that no mitigating factors exist, or *that a mitigating factor or factors exist,* you must now decide whether the prosecution has proven that any factors in mitigation do not outweigh the aggravating factor or factors." 794 P2d 965, 997 (Colo 1990) (emphasis added).

In Mills v Maryland, supra, we addressed the constitutionality of instructions requiring juror unanimity on mitigating factors. We concluded that such instructions violate the cardinal principle of our capital jurisprudence that " 'the sentencer may not . . . *be precluded from considering* "any relevant mitigating evidence." ' " 486 US, at 374-375, 100 L Ed 2d 384, 108 S Ct 1860, quoting Skipper v South Carolina, 476 US 1, 4, 90 L Ed 2d 1, 106 S Ct 1669 (1986), in turn quoting Eddings v Oklahoma, 455 US 104, 114, 71 L Ed 2d 1, 102 S Ct 869 (1982). In Mills, an impermissible juror unanimity requirement was imposed by a jury verdict form stating: " 'Based upon the evidence we unanimously find that each of the following mitigating circumstances which is marked "yes" has been proven to exist . . . .' " 486 US, at 387, 100 L Ed 2d 384, 108 S Ct 1860. McKoy v North Carolina, supra, presented a similar situation. In McKoy, the jury had been instructed both orally and in writing that it had to make unanimous findings on the existence of mitigating factors before proceeding to consider them. 494 US, at 436, 108 L Ed 2d 369, 110 S Ct 1227. Applying Mills, we vacated McKoy's death sentence.

Instruction No. 21 in the present case suffers from the infirmity condemned in Mills and McKoy. As noted, Instruction No. 21 directed the jury that if it "made *unanimous findings* . . . that one or more aggravating factors exist and that no mitigating factors exist, *or* that a *mitigating factor or factors exist,"* it should proceed to weigh the aggravating factors against the mitigating factors. The phrase "unanimous findings" can be read only to have modified both "aggravating factors" and "mitigating factors." For the instruction to have been constitutional, the jury would have to have read the pertinent language in Instruction No. 21 as permitting it to weigh mitigating factors if it made *nonunanimous* "findings . . . that a mitigating factor or factors exist." Instruction No. 21 clearly does not say this.

The Colorado Supreme Court, however, refused to vacate petitioner's death sentence. Relying on Boyde v California, 494 US 370, 108 L Ed 2d 316, 110 S Ct 1190 (1990), the Colorado Supreme Court reasoned that "there was no reasonable likelihood" that the jury would have interpreted the instruction to require juror unanimity on mitigating factors. 794 P2d, at 982. I cannot accept that our decision in Boyde affects the invalidity of Instruction No. 21 under Mills and McKoy.

In Boyde, this Court examined whether instructions at the penalty phase of Boyde's capital proceeding impermissibly limited consideration of mitigating evidence pertaining to Boyde's character and background. The trial court instructed the jury that, in addition to 10 specific factors to be considered in determining the penalty, the jury could consider " '[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.' " Boyde v California, supra, at 381, 108 L Ed 2d 316, 110 S Ct 1190.

The Court concluded in Boyde that even though the instructions did not identify Boyde's deprived background and emotional troubles as relevant considerations, there was no "reasonable likelihood" that the jury felt precluded from considering these factors. Noting the view, "long held by this society," that such factors "would counsel imposition of a sentence less than death," the Court found it unlikely that the jury would have understood the instructions to prevent consideration of such evidence. See 494 US, at 382, 108 L Ed 2d 316, 110 S Ct 1190. Additionally, the Court concluded that the context of the proceeding, in which Boyde introduced without objection four days of testimony concerning his background and character, "would have led reasonable jurors to believe that evidence of petitioner's background and character could be considered in mitigation." Id., at 383, 108 L Ed 2d 316, 110 S Ct 1190.

The facts in Boyde offer little assistance in resolving this case. Unlike the jury in Boyde, the jury in this case could not have been guided either by the evidence introduced or by any "long held" societal views in attempting to comprehend Instruction No. 21. That instruction indicates that the jury is required to find the existence of mitigating factors unanimously. Clearly, there is no "long held" societal view as to procedural rules of this sort. Rather, the jury's sole source of direction as to the meaning of Instruction No. 21 was the instruction itself. For the reasons I have indicated, there clearly *was* a "reasonable likelihood" that the jury viewed the direction to make "unanimous findings" as applying not only to aggravating factors but also to mitigating factors.

The Colorado Supreme Court reasoned that the jury would not have understood Instruction No. 21 in this way in light of the instructions on aggravating factors. These instructions stated on several occasions that any aggravating factors must be found unanimously, and one instruction required the jury to vote to determine the existence of particular aggravating factors. The court reasoned that the absence of similar repetition in the instructions on mitigating factors and the absence of provisions for voting upon the existence of mitigating factors precluded the jurors from inferring that unanimity was necessary for mitigating factors. 794 P2d, at 981-982.

In my view, this assumption is unrealistic. As a matter of convention, we presume that jurors follow jury instructions. See McKoy v North Carolina, supra, at 454, 108 L Ed 2d 369, 110 S Ct 1227 (Kennedy, J., concurring in judgment). Instruction No. 21 required unanimity as to the existence of mitigating circumstances. It is difficult to imagine, then, that the jury would have inferred from the instructions setting forth the unanimity requirement with respect to *aggravating factors* a signal to disavow the clear import of Instruction No. 21.

Nor am I convinced that anything the instructions otherwise said about *mitigating factors* would have prompted the jury to disregard the link between "unanimous findings" and "mitigating factors" in Instruction No. 21. The Colorado Supreme Court suggested that the defect in Instruction No. 21 was cured by "a theme" running through the instructions "that the individual jurors could disagree with respect to the effect they gave to mitigating factors." 794 P2d, at 982 (citing Instruction Nos. 15, 21, and 22).[1] However, this "theme" in the jury charge addressed only the juror's individual autonomy in deciding what weight to attach to a particular mitigating factor. The instructions said nothing to upset the indication in Instruction No. 21 that a juror could weigh a mitigating factor only after it had been unanimously found to exist. Indeed, Instruction No. 21 expressly directed the jury that it first had to find the existence of mitigating factors before weighing could take place. Instruction No. 21 explained that in the *first two steps* of its deliberations the jury was to make "unanimous findings" with respect to aggravating and mitigating factors, and it was not until "the *third step* of [the] deliberations" that the jury was to weigh the aggravating factors against the mitigating factors. Id., at 997 (quoting Instruction No. 21).[2]

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[1] Instruction No. 15 stated: "If one or more jurors finds sufficient mitigating factor or factors exist that outweigh a specified aggravating factor or factors, then the result is a sentence of life imprisonment." 794 P2d 965, 995 (Colo 1990). This direction was repeated in Instruction No. 21. See id., at 997. Instruction No. 22 added:

"Each of you must also decide for yourself what weight to give each mitigating circumstance that you find exists. Your decision as to what weight to give any mitigating circumstance does not have to be unanimous. You do not have to take the decisions, opinions or feelings of any other juror into account, although you may do so if you wish." Ibid.

[2] I also reject the Colorado Supreme Court's suggestion that the infirmity in the instructions might have been cured by defense counsel's plea in closing argument that the jurors "can rely on any factor you wish to return a life sentence . . . [and] [y]ou don't have to be unanimous on those factors." Id., at 982, n 13 (emphasis omitted). Statements of counsel "are usually billed in advance to the jury as matters of argument" and "generally carry less weight with a jury than do instructions from the court." Boyde v California, 494 US 370, 384, 108 L Ed 2d 316, 110 S Ct 1190 (1990). Of course, in some instances an improper argument from counsel may negate a jury instruction that correctly explains to a jury the standards governing its inquiry. Cf. ibid. But it is an entirely different matter to presume the contrary: that an argument from counsel properly stating the law to the jury can save a jury instruction that does not.

A "commonsense understanding" of the instructions in this case, Boyde v California, 494 US, at 381, 108 L Ed 2d 316, 110 S Ct 1190, confirms that the jury would have attached an unconstitutional meaning to Instruction No. 21. By its plain and natural meaning, Instruction No. 21 imposed a jury unanimity requirement that is incompatible with Mills and McKoy. As nothing else in the instructions can support the Colorado Supreme Court's intuitive judgment that the jury did not attach that unconstitutional meaning to Instruction No. 21, the instructions are not saved by the Boyde test. Because I believe that petitioner's death sentence is constitutionally defective, I would grant the application for stay and the petition for certiorari.

II

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (Marshall, J., dissenting), I would grant the application for stay and the petition for certiorari and vacate petitioner's death sentence even if I did not believe this case otherwise merited review.

No. 90-6156. In Re Willard Lester England and William Stahl, Petitioners

498 US 1045, 112 L Ed 2d 793, 111 S Ct 773.

January 14, 1991. The petition for writ of mandamus is denied.

No. 90-5140. Ronald Price, Petitioner v Dorcas Hardy

498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

January 14, 1991. The petition for rehearing is denied.

Former Decision, 498 US 985, 112 L Ed 2d 531, 111 S Ct 520.

No. 90-5906. William Frank Schlicher, Petitioner v A. Munoz, et al.

498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

January 14, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1001, 112 L Ed 2d 568, 111 S Ct 562.

No. 90-5910. Karen Lynne Smith Harper, Petitioner v Dale Bumpers, et al.

498 US 1060, 112 L Ed 2d 793, 111 S Ct 773.

January 14, 1991. The petition for rehearing is denied.

Former Decision, 498 US 989, 112 L Ed 2d 539, 111 S Ct 528.

No. 90-5916. Micheal A. Johnson, Petitioner v Gladys Mack

498 US 1060, 112 L Ed 2d 794, 111 S Ct 773.

January 14, 1991. The petition for rehearing is denied.

Former Decision, 498 US 989, 112 L Ed 2d 539, 111 S Ct 528.

No. 90-5983. Kathryn S. Martin, Petitioner v United States Department of Labor, Employment Standards Administration Office of Worker's Compensation

498 US 1060, 112 L Ed 2d 794, 111 S Ct 774.

January 14, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1014, 112 L Ed 2d 591, 111 S Ct 586.

[498 US 292]

UNITED STATES, Petitioner
v
R. ENTERPRISES, INC. et al.

498 US 292, 112 L Ed 2d 795, 111 S Ct 722

[No. 89-1436]

Argued October 29, 1990. Decided January 22, 1991.

Decision: Quashing of subpoena duces tecum, issued pursuant to federal grand jury investigation and challenged on relevancy grounds, held erroneous under Rule 17(c) of Federal Rules of Criminal Procedure.

SUMMARY

In connection with an investigation of alleged interstate transportation of obscene materials, a federal grand jury sitting in the Eastern District of Virginia issued subpoenas duces tecum to three corporations—the first of which distributed sexually oriented paperback books, magazines, and videotapes, the second of which distributed adult materials, and the third of which sold books, magazines, and videotapes. All three corporations were based in New York and were wholly owned by the same person. The subpoenas sought a variety of corporate books and records as well as copies of 193 videotapes that the videotape distributor had shipped to retailers in the Eastern District of Virginia. The United States District Court for the Eastern District of Virginia denied the motions of all three corporations to quash the subpoenas, and, after the corporations still refused to comply with the subpoenas, the District Court found each corporation in contempt. The United States Court of Appeals for the Fourth Circuit (1) upheld the subpoenas for the videotape distributor's business records and remanded the motion to quash the subpoena for that corporation's videotapes, and (2) quashed the subpoenas for the business records of the other two corporations (884 F2d 772). In quashing the subpoenas, the Court of Appeals concluded that, because there was no evidence in the record that either of the two corporations had ever shipped materials into, or otherwise conducted business in, the Eastern District of Virginia, and because any evidence concerning matters outside Virginia would most likely be inadmissible on relevancy grounds at any trial that might occur, the subpoenas

SUBJECT OF ANNOTATION

Beginning on page 1237, infra

Supreme Court's construction and application of Rule 17 of Federal Rules of Criminal Procedure, pertaining to subpoenas in criminal cases

Briefs of Counsel, p 1235, infra.

failed to meet the requirement—established in a prior Supreme Court case with respect to subpoenas issued in the trial context—that any documents subpoenaed under Rule 17(c) of the Federal Rules of Criminal Procedure, which governs the issuance of subpoenas duces tecum in federal criminal proceedings, must be admissible as evidence at trial.

On certiorari, the United States Supreme Court reversed in part and remanded. In an opinion by O'Connor, J., joined by Rehnquist, Ch. J., and White, Kennedy, and Souter, JJ., and joined in pertinent part by Scalia, J., it was held that the District Court had correctly denied the motions to quash, because (1) a motion to quash, on relevancy grounds, a subpoena duces tecum issued under Rule 17(c)—which provides that a court may quash such a subpoena if compliance would be unreasonable or oppressive—in connection with a federal grand jury investigation must be denied by a Federal District Court unless the District Court determines that there is no reasonable possibility that the category of materials the government seeks will produce information relevant to the general subject of the grand jury's investigation, (2) the two corporations had not challenged the subpoenas as being too indefinite nor claimed that compliance with the subpoenas would be overly burdensome, and (3) the District Court could have concluded—from the facts that the two corporations, as well as another corporation which had shipped sexually explicit materials into the Eastern District of Virginia, were wholly owned by the same person, and that all three corporations did business in the same area—that there was a reasonable possibility that the two corporations' business records sought under the subpoenas would produce information relevant to the grand jury investigation.

Scalia, J., joined all the court's opinion except the part expressing the view that, with respect to a motion to quash a subpoena duces tecum in connection with a federal grand jury investigation, a court may be justified, in a case where it is alleged that compliance with the subpoena would be unreasonable, in requiring the government to reveal to the court in chambers the general subject of the grand jury's investigation before requiring the challenging party to carry its burden of showing unreasonableness.

Stevens, J., joined by Marshall and Blackmun, JJ., concurring in part and concurring in the judgment, agreed with the court that what is unreasonable or oppressive in the context of a trial subpoena is not necessarily unreasonable or oppressive in the grand jury context, and that the case should be remanded to the Court of Appeals, but stressed that the Supreme Court's opinion should not be read to suggest that the deferential relevance standard which the court formulated will govern decisions in every case, no matter how intrusive or burdensome the request.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Depositions and Discovery §§ 40, 41; Grand Jury § 4 — subpoena duces tecum — motion to quash

1a-1d. A motion to quash, on relevancy grounds, a subpoena duces tecum issued under Rule 17(c) of the Federal Rules of Criminal Procedure—which governs the issuance of subpoenas duces tecum seeking the production of documentary evidence in federal criminal proceedings and provides that a court may quash a subpoena if compliance would be unreasonable or oppressive—in connection with a federal grand jury inves-

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23 Am Jur 2d, Depositions and Discovery § 400; 38 Am Jur 2d, Grand Jury §§ 26-28, 32

8 Federal Procedure, L Ed, Criminal Procedure §§ 22:266, 22:284

7 Federal Procedural Forms, L Ed, Criminal Procedure §§ 20:450, 20:472, 20:478, 20:481, 20:482

USCS Court Rules, Federal Rules of Criminal Procedure, Rule 17(c)

US L Ed Digest, Depositions and Discovery §§ 40, 41; Grand Jury § 4

Index to Annotations, Criminal Procedure Rules; Grand Jury; Investigations and Interrogations; Production of Documents; Subpoena Duces Tecum

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

What is "judicial proceeding" within Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure permitting disclosure of matters occurring before grand jury when so directed by court preliminarily to or in connection with such proceeding. 52 ALR Fed 411.

Accused's right to inspection of minutes of federal grand jury. 3 ALR Fed 29.

Power of court to control evidence or witnesses going before grand jury. 52 ALR3d 1316.

Form, particularity, and manner of designation required in subpoena duces tecum for production of corporation books, records, and documents. 23 ALR2d 862.

tigation must be denied by the Federal District Court for the district in which the grand jury is sitting, unless the District Court determines that there is no reasonable possibility that the category of materials the government seeks will produce information relevant to the general subject of the grand jury's investigation, because in the grand jury context, the decision as to what offense will be charged is routinely not made until after the grand jury has concluded its investigation, and thus, one cannot know in advance whether information sought during the investigation will be relevant and admissible in a prosecution for a particular offense; therefore, it is improper for a Federal Court of Appeals to quash subpoenas duces tecum—issued by a Federal District Court in connection with the investigation, by a federal grand jury sitting in the District Court's district, of alleged interstate transportation of obscene materials—seeking certain business records of an out-of-state based corporation that distributes adult materials and another out-of-state based corporation that sells books, magazines, and videotapes, neither of which corporations has been shown to have shipped materials into, or otherwise conducted business in, the District Court's district, where (1) the two corporations have not challenged the subpoenas as being too indefinite nor claimed that compliance with the subpoenas would be overly burdensome, and (2) the District Court, which denied motions to quash the subpoenas, could have concluded—from the facts that the two corporations, as well as another corporation which had shipped sexually explicit materials into the District Court's district, are wholly owned by the same person, and that all three corporations do business in the same area—that there was a reasonable possibility that the business records sought under the subpoenas would produce information relevant to the grand jury investigation.

[See annotation p 1237, infra]

Grand Jury §§ 1, 4, 6 — conduct of proceedings — examination of witnesses

2. A grand jury is an investigatory body charged with the responsibility of determining whether a crime has been committed, and a grand jury can investigate merely on suspicion that the law is being violated or because the grand jury wants assurance that the law is not being violated; the function of a grand jury is to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred, and a grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.

Supreme Court of the United States § 3 — extent of jurisdiction

3. The jurisdiction of the United States Supreme Court is predicated on a specific case or controversy.

Grand Jury § 4 — issuance of subpoena — probable cause

4. The government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable cause, because the very purpose of requesting the information sought by the subpoena is to ascertain whether probable cause exists, where the identity of the offender, and the precise nature of the offense,

if there be one, normally are developed at the conclusion of a grand jury's labors, not at the beginning.

Grand Jury §§ 4, 5, 6 — production of evidence — summoning and examining witnesses

5. A grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and a grand jury's operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials, because (1) the same rules that, in an adversary hearing on the merits, may increase the likelihood of accurate determinations of guilt or innocence do not necessarily advance the mission of a grand jury, whose task is to conduct an ex parte investigation to determine whether there is probable cause to prosecute a particular defendant, (2) strict observance of trial rules in the context of a grand jury's preliminary investigation would result in interminable delay but add nothing to the assurance of a fair trial, and (3) permitting witnesses to invoke the exclusionary rule would delay and disrupt grand jury proceedings by requiring adversarial hearings on peripheral matters and would effectively transform such proceedings into preliminary trials on the merits.

Depositions and Discovery § 40; Grand Jury § 4 — subpoena duces tecum — procedural delays — secrecy

6a, 6b. The standards set out in United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090—requiring, for enforcement of a subpoena duces tecum issued in the trial context, that the government establish the relevancy, admissibility, and specificity of the materials sought by the subpoena—are inapplicable to a subpoena issued in connection with a grand jury investigation, because (1) the multifactor test announced in United States v Nixon would invite procedural delays and detours while courts evaluate the relevancy and admissibility of documents sought by a particular subpoena, (2) grand jury proceedings should be free of such delays, which would impede a grand jury's investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws, (3) requiring the government to explain in too much detail the particular reasons underlying a subpoena threatens to compromise the indispensable secrecy of grand jury proceedings, (4) broad disclosure also affords the targets of investigation far more information about a grand jury's internal workings than the Federal Rules of Criminal Procedure appear to contemplate, and (5) in the grand jury context, the decision as to what offense will be charged is routinely not made until after the grand jury has concluded its investigation, and one cannot know in advance whether information sought during the investigation will be relevant and admissible in a prosecution for a particular offense.

[See annotation p 1237, infra]

Depositions and Discovery § 40; Grand Jury §§ 1, 4 — investigatory powers — conduct of proceedings — subpoena duces tecum — reasonableness

7a, 7b. The investigatory powers of a grand jury are not unlimited; grand juries are not licensed to engage in arbitrary fishing expeditions, nor may they select targets of investigation out of malice or an intent to harass; the limit imposed on a grand jury by the standard of Rule 17(c) of the Federal Rules of Criminal Procedure—which (1) governs the issuance of subpoenas duces tecum seeking the production of documentary evidence or of objects in federal criminal proceedings, and (2) provides that a court may quash or modify a subpoena if compliance would be unreasonable or oppressive—is not self-explanatory because what is reasonable depends on the context.

[See annotation p 1237, infra]

Evidence § 419 — grand jury subpoena — presumption of reasonableness

8. Because the law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority, a grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance; this result is indicated by the language of Rule 17(c) of the Federal Rules of Criminal Procedure—which governs the issuance of subpoenas duces tecum seeking the production of documentary evidence or of objects in federal criminal proceedings—permitting a subpoena to be quashed only "on motion" and "if compliance would be unreasonable"; thus, to the extent that a Federal Court of Appeals places an initial burden on the government to show the reasonableness of a subpoena duces tecum issued in connection with a grand jury investigation, the Court of Appeals commits error.

[See annotation p 1237, infra]

Appeal § 1353; Depositions and Discovery § 40; Grand Jury § 4 — subpoena duces tecum — showing unreasonableness — decision not affecting party

9. With respect to a motion to quash a subpoena duces tecum seeking the production of documentary evidence in connection with a federal grand jury investigation, a court may be justified, in a case where it is alleged that compliance with the subpoena would be unreasonable, in requiring the government to reveal the general subject of the grand jury's investigation before requiring the challenging party to carry its burden of showing unreasonableness, because it seems unlikely that a challenging party who does not know the general subject matter of a grand jury's investigation, no matter how valid that party's claim, will be able to make the necessary showing that compliance would be unreasonable; however, the United States Supreme Court, on certiorari to review a Federal Court of Appeals' quashing of particular business records subpoenas issued in connection with a federal grand jury investigation, need not resolve the question whether requiring the government to reveal the general subject of the investigation is justified, where there is no doubt that the parties whose business records are sought by the subpoenas know the subject of the investigation.

[See annotation p 1237, infra]

Depositions and Discovery § 40; Grand Jury § 4 — subpoena duces tecum — motion to quash

10. To insure that subpoenas duces tecum seeking the production of documentary evidence in connection with a federal grand jury investigation are not routinely challenged as a form of discovery, a Federal District Court may require that the government reveal the subject of the investigation to the trial court in chambers, so that the court may determine whether a motion to quash a subpoena duces tecum has a

reasonable prospect for success before the court discloses the subject matter of the investigation to the challenging party.

[See annotation p 1237, infra]

Grand Jury § 4 — conduct of proceedings

11. A grand jury need not accept on faith the self-serving assertions of those who may have committed criminal acts; rather, a grand jury is entitled to determine for itself whether a crime has been committed.

Appeal § 1692.1 — issue not passed on below

12. On certiorari to review a Federal Court of Appeals' judgment determining that a subpoena duces tecum seeking the production of certain business records in connection with a federal grand jury investigation did not satisfy Rule 17(c) of the Federal Rules of Criminal Procedure —which (1) governs the issuance of subpoenas duces tecum in federal criminal proceedings, and (2) provides that a subpoena may be quashed if compliance with the subpoena would be unreasonable or oppressive—the United States Supreme Court, in reversing the Court of Appeals' judgment and remanding the case for further proceedings, will express no view on, and leave to be resolved by the Court of Appeals, the contention that the subpoenas seek records relating to activities implicating the Federal Constitution's First Amendment and thus requiring the government to demonstrate that the records are particularly relevant to its investigation, where the Court of Appeals did not pass on the First Amendment issue.

SYLLABUS BY REPORTER OF DECISIONS

Pursuant to an investigation into allegations of interstate transportation of obscene materials, a federal grand jury sitting in the Eastern District of Virginia issued subpoenas duces tecum to Model Magazine Distributors, Inc. (Model), and to respondents R. Enterprises, Inc., and MFR Court Street Books, Inc. (MFR), all of which were based in New York and wholly owned by the same person. The subpoenas sought a variety of corporate books and records and, in Model's case, copies of certain videotapes that it had shipped to retailers in the Eastern District. The District Court denied the companies' motions to quash the subpoenas and, when the companies refused to comply with the subpoenas, found each of them in contempt. The Court of Appeals, inter alia, quashed the subpoenas issued to respondents, ruling that the subpoenas did not satisfy the relevancy prong of the test set out in United States v Nixon, 418 US 683, 699-700, 41 L Ed 2d 1039, 94 S Ct 3090—which requires the Government to establish relevancy, admissibility, and specificity in order to enforce a subpoena in the trial context—and that the subpoenas therefore failed to meet the requirement that any document subpoenaed under Federal Rule of Criminal Procedure 17(c) be admissible as evidence at trial. The court did not consider respondents' contention that enforcement of the subpoenas would likely infringe their First Amendment rights.

Held:

1. The Court of Appeals did not apply the proper standard in evaluating the subpoenas issued to respondents.

(a) The Nixon standard does not apply in the context of grand jury proceedings. The unique role of a grand jury makes its subpoenas much different from subpoenas issued in the context of a criminal trial. Thus, this Court has held that a grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and that its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials. Nixon's multifactor test would invite impermissible procedural delays and detours while courts evaluate the relevancy and admissibility of documents sought by a particular subpoena. Additionally, requiring the Government to explain in too much detail the particular reasons underlying a subpoena threatens to compromise the indispensable secrecy of grand jury proceedings. Broad disclosure also affords the targets of investigation far more information about the grand jury's workings than the Rules of Criminal Procedure appear to contemplate.

(b) The grand jury's investigatory powers are nevertheless subject to the limit imposed by Rule 17(c), which provides that "the court *on motion* made promptly may quash or modify the subpoena *if compliance would be unreasonable* or oppressive" (emphasis added). Since a grand jury subpoena issued through normal channels is presumed to be reasonable, the burden of showing unreasonableness, as the above language indicates, must be on the recipient who seeks to avoid compliance, and the Court of Appeals erred to the extent that it placed an initial burden on the Government. Moreover, where, as here, a subpoena is challenged on relevancy grounds, the motion to quash must be denied unless the district court determines that there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation. Since respondents did not challenge the subpoenas as being too indefinite or claim that compliance would be overly burdensome, this Court does not consider these aspects of the subpoenas.

(c) Because it seems unlikely that a challenging party who does not know the general subject matter of the grand jury's investigation will be able to make the necessary showing that compliance with a subpoena would be unreasonable, a court may be justified in requiring the Government to reveal the investigation's general subject before requiring the challenger to carry its burden of persuasion. However, this question need not be resolved here, since there is no doubt that respondents knew the subject of the particular investigation.

(d) Application of the above principles demonstrates that the District Court correctly denied respondents' motions to quash. Based on the undisputed facts that all three companies are owned by the same person, that all do business in the same area, and that Model has shipped sexually explicit materials into the Eastern District of Virginia, the court could have concluded that there was a reasonable possibility that respondents' business records would produce information relevant to the grand jury's investigation, notwithstanding respondents' self-serving denial of any connection to Virginia.

2. This Court expresses no view on, and leaves to the Court of Appeals to resolve, the issue whether,

based on respondents' contention that the records subpoenaed related to First Amendment activities, the Government was required to demonstrate that they were particularly relevant to the investigation.

884 F2d 772, reversed in part and remanded.

O'Connor, J., delivered the opinion for a unanimous Court with respect to Parts I and II, the opinion of the Court with respect to Parts III-A and IV, in which Rehnquist, C. J., and White, Scalia, Kennedy, and Souter, JJ., joined, and the opinion of the Court with respect to Part III-B, in which Rehnquist, C. J., and White, Kennedy, and Souter, JJ., joined. Stevens, J., filed an opinion concurring in part and concurring in the judgment, in which Marshall and Blackmun, JJ., joined.

APPEARANCES OF COUNSEL

William C. Bryson argued the cause for petitioner.

Herald P. Fahringer argued the cause for respondents.

Briefs of Counsel, p 1235, infra.

OPINION OF THE COURT

Justice **O'Connor** delivered the opinion of the Court.*

[1a] This case requires the Court to decide what standards apply when a party seeks to avoid compliance with a subpoena duces tecum issued in connection with a grand jury investigation.

I

Since 1986, a federal grand jury sitting in the Eastern District of Virginia has been investigating allegations of interstate transportation of obscene materials. In early 1988, the grand jury issued a series of subpoenas to three companies—Model Magazine Distributors, Inc. (Model), R. Enterprises, Inc., and MFR Court Street Books, Inc. (MFR). Model is a New York distributor of sexually oriented paperback books, magazines, and videotapes. R. Enterprises, which distributes adult materials, and MFR, which sells books, magazines, and videotapes, are also based in New York. All three companies are wholly owned by Martin Rothstein. The grand jury subpoenas sought a variety of corporate

books and records and, in Model's case, copies of 193 videotapes that Model had shipped to retailers in the Eastern District of Virginia. All three companies moved to quash the subpoenas, arguing that the subpoenas called for production of materials irrelevant to the grand jury's investigation and that the enforcement of the subpoenas would likely infringe their First Amendment rights.

The District Court, after extensive hearings, denied the motions to quash. As to Model, the court found that the subpoenas for business records were sufficiently specific and that production of the videotapes would not constitute a prior restraint. App to Pet for Cert 57a-58a. As to R. Enterprises, the court found a "sufficient connection with Virginia for further investigation by the grand jury." Id., at 60a. The court relied in large part on the statement attributed to Rothstein that the three companies were "all the same thing, I'm president of all three."

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* Justice **Scalia** joins in all but Part III-B of this opinion.

Ibid. Additionally, the court explained in denying MFR's motion to quash that it was "inclined to agree" with "the majority of the jurisdictions," which do not require the Government to make a "threshold showing" before a grand jury subpoena will be enforced. Id., at 63a. Even assuming that a preliminary showing of relevance was required, the court determined that the Government had made such a showing. It found sufficient evidence that the companies were "related entities," at least one of which "certainly did ship sexually explicit material into the Commonwealth of Virginia." Ibid. The court concluded that the subpoenas in this case were "fairly standard business subpoenas" and "ought to be complied with." Id., at 65a. Notwithstanding these findings, the companies refused to comply with the subpoenas. The District Court found each in contempt and fined them $500 per day, but stayed imposition of the fine pending appeal. Id., at 64a.

The Court of Appeals for the Fourth Circuit upheld the business records subpoenas issued to Model, but remanded the motion to quash the subpoena for Model's videotapes. [498 US 296] In re Grand Jury 87-3 Subpoena Duces Tecum, 884 F2d 772 (1989). Of particular relevance here, the Court of Appeals quashed the business records subpoenas issued to R. Enterprises and MFR. In doing so, it applied the standards set out by this Court in United States v Nixon, 418 US 683, 699-700, 41 L Ed 2d 1039, 94 S Ct 3090 (1974). The court recognized that Nixon dealt with a trial subpoena, not a grand jury subpoena, but determined that the rule was "equally applicable" in the grand jury context. 884 F2d, at 776, n 2. Accordingly, it required the Government to clear the three hurdles that Nixon established in the trial context—relevancy, admissibility, and specificity—in order to enforce the grand jury subpoenas. Id., at 776. The court concluded that the challenged subpoenas did not satisfy the Nixon standards, finding no evidence in the record that either company had ever shipped materials into, or otherwise conducted business in, the Eastern District of Virginia. Ibid. The Court of Appeals specifically criticized the District Court for drawing an inference that, because Rothstein owned all three businesses and one of them had undoubtedly shipped sexually explicit materials into the Eastern District of Virginia, there might be some link between the Eastern District of Virginia and R. Enterprises or MFR. Id., at 777. It then noted that "any evidence concerning Mr. Rothstein's alleged business activities outside of Virginia, or his ownership of companies which distribute allegedly obscene materials outside of Virginia, would most likely be inadmissible on relevancy grounds at any trial that might occur," and that the subpoenas therefore failed "to meet the requirements [sic] that any documents subpoenaed under [Federal] Rule [of Criminal Procedure] 17(c) must be admissible as evidence at trial." Ibid., citing Nixon, supra, at 700, 41 L Ed 2d 1039, 94 S Ct 3090. The Court of Appeals did not consider whether enforcement of the subpoenas duces tecum issued to respondents implicated the First Amendment.

We granted certiorari to determine whether the Court of Appeals applied the proper standard in evaluating the [498 US 297] grand jury subpoenas issued to respondents. 496 US 924, 110 L Ed 2d 638, 110 S Ct 2616 (1990). We now reverse.

II

[2, 3] The grand jury occupies a unique role in our criminal justice system. It is an investigatory body charged with the responsibility of determining whether or not a crime has been committed. Unlike this Court, whose jurisdiction is predicated on a specific case or controversy, the grand jury "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." United States v Morton Salt Co. 338 US 632, 642-643, 94 L Ed 401, 70 S Ct 357 (1950). The function of the grand jury is to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred. As a necessary consequence of its investigatory function, the grand jury paints with a broad brush. "A grand jury investigation 'is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.' " Branzburg v Hayes, 408 US 665, 701, 33 L Ed 2d 626, 92 S Ct 2646 (1972), quoting United States v Stone, 429 F2d 138, 140 (CA2 1970).

[4] A grand jury subpoena is thus much different from a subpoena issued in the context of a prospective criminal trial, where a specific offense has been identified and a particular defendant charged. "[T]he identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning." Blair v United States, 250 US 273, 282, 63 L Ed 979, 39 S Ct 468 (1919). In short, the Government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable cause because the very purpose of requesting the information is to ascertain whether probable cause exists. See Hale v Henkel, 201 US 43, 65, 50 L Ed 652, 26 S Ct 370 (1906).

[5] This Court has emphasized on numerous occasions that many of the rules and restrictions that apply at a trial do not apply in grand jury proceedings. This is especially true of evidentiary restrictions. The same rules that, in an adversary hearing on the merits, may increase the likelihood of accurate determinations of guilt or innocence do not necessarily advance the mission of a grand jury, whose task is to conduct an ex parte investigation to determine whether or not there is probable cause to prosecute a particular defendant. In Costello v United States, 350 US 359, 100 L Ed 397, 76 S Ct 406 (1956), this Court declined to apply the rule against hearsay to grand jury proceedings. Strict observance of trial rules in the context of a grand jury's preliminary investigation "would result in interminable delay but add nothing to the assurance of a fair trial." Id., at 364, 100 L Ed 397, 76 S Ct 406. In United States v Calandra, 414 US 338, 38 L Ed 2d 561, 94 S Ct 613 (1974), we held that the Fourth Amendment exclusionary rule does not apply to grand jury proceedings. Permitting witnesses to invoke the exclusionary rule would "delay and disrupt grand jury proceedings" by requiring adversary hearings on peripheral matters, id., at 349, 38 L Ed 2d 561, 94 S Ct 613, and would effectively transform such proceedings into preliminary trials on the merits, id., at 349-350, 38 L Ed 2d 561, 94 S Ct 613. The teaching of the Court's decisions is clear: A grand jury "may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials," id., at 343, 38 L Ed 2d 561, 94 S Ct 613.

[6a] This guiding principle renders suspect the Court of Appeals' holding that the standards announced in Nixon as to subpoenas issued in anticipation of trial apply equally in the grand jury context. The multifactor test announced in Nixon would invite procedural delays and detours while courts evaluate the relevancy and admissibility of documents sought by a particular subpoena. We have expressly stated that grand jury proceedings should be free of such delays. "Any holding that would saddle a grand jury with minitrials

and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws." United States v Dionisio, 410 US 1, 17, 35 L Ed 2d 67, 93 S Ct 764 (1973). Accord, Calandra, supra, at 350, 38 L Ed 2d 561, 94 S Ct 613. Additionally, application of the Nixon test in this context ignores that grand jury proceedings are subject to strict secrecy requirements. See Fed Rule Crim Proc 6(e). Requiring the Government to explain in too much detail the particular reasons underlying a subpoena threatens to compromise "the indispensable secrecy of grand jury proceedings." United States v Johnson, 319 US 503, 513, 87 L Ed 1546, 63 S Ct 1233 (1943). Broad disclosure also affords the targets of investigation far more information about the grand jury's internal workings than the Federal Rules of Criminal Procedure appear to contemplate.

III

A

[7a] The investigatory powers of the grand jury are nevertheless not unlimited. See Branzburg, supra, at 688, 33 L Ed 2d 626, 92 S Ct 2646; Calandra, supra, at 346, and n 4, 38 L Ed 2d 561, 94 S Ct 613. Grand juries are not licensed to engage in arbitrary fishing expeditions, nor may they select targets of investigation out of malice or an intent to harass. In this case, the focus of our inquiry is the limit imposed on a grand jury by Federal Rule of Criminal Procedure 17(c), which governs the issuance of subpoenas duces tecum in federal criminal proceedings. The Rule provides that "[t]he court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive."

[1b, 6b, 7b] This standard is not self-explanatory. As we have observed, "what is reasonable depends on the context." New Jersey v T. L. O., 469 US 325, 337, 83 L Ed 2d 720, 105 S Ct 733 (1985). In Nixon, this Court defined what is reasonable in the context of a jury trial. We determined that, in order to require production of information prior to trial, a party must make a reasonably specific request for information that would be both relevant and admissible at trial. 418 US, at 700, 41 L Ed 2d 1039, 94 S Ct 3090. But, for the

[498 US 300]

reasons we have explained above, the Nixon standard does not apply in the context of grand jury proceedings. In the grand jury context, the decision as to what offense will be charged is routinely not made until after the grand jury has concluded its investigation. One simply cannot know in advance whether information sought during the investigation will be relevant and admissible in a prosecution for a particular offense.

To the extent that Rule 17(c) imposes some reasonableness limitation on grand jury subpoenas, however, our task is to define it. In doing so, we recognize that a party to whom a grand jury subpoena is issued faces a difficult situation. As a rule, grand juries do not announce publicly the subjects of their investigations. See supra, at 299, 112 L Ed 2d, at 806. A party who desires to challenge a grand jury subpoena thus may have no conception of the Government's purpose in seeking production of the requested information. Indeed, the party will often not know whether he or she is a primary target of the investigation or merely a peripheral witness. Absent even minimal information, the subpoena recipient is likely to find it exceedingly difficult to persuade a court that "compliance would be unreasonable." As one pair of commentators has summarized it, the challenging party's "unenviable task is to seek to persuade the court that the subpoena that has been served on [him or her] could not possibly serve any investigative purpose that the grand jury could legitimately be pursuing." 1 S. Beale & W. Bryson, Grand Jury Law and Practice § 6:28 (1986).

[1c, 8] Our task is to fashion an appropriate standard of reasonableness, one that gives due weight to the difficult position of subpoena recipients but does not impair the strong governmental interests in affording grand juries wide latitude, avoiding minitrials on peripheral matters, and preserving a necessary level of secrecy. We begin by reiterating that the law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority.

[498 US 301]

See United States v Mechanik, 475 US 66, 75, 89 L Ed 2d 50, 106 S Ct 938 (1986) (O'Connor, J., concurring in judgment) ("The grand jury proceeding is accorded a presumption of regularity, which generally may be dispelled only upon particularized proof of irregularities in the grand jury process"). See also Hamling v United States, 418 US 87, 139, n 23, 41 L Ed 2d 590, 94 S Ct 2887 (1974); United States v Johnson, supra, at 512-513, 87 L Ed 1546, 63 S Ct 1233. Consequently, a grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance. Indeed, this result is indicated by the language of Rule 17(c), which permits a subpoena to be quashed only "on motion" and "if *compliance* would be unreasonable" (emphasis added). To the extent that the Court of Appeals placed an initial burden on the Government, it committed error. Drawing on the principles articulated above, we conclude that where, as here, a subpoena is challenged on relevancy grounds, the motion to quash must be denied unless the district court determines that there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation. Respondents did not challenge the subpoenas as being too indefinite nor did they claim that compliance would be overly burdensome. See App in In re Grand Jury 87-3 Subpoena Duces Tecum, Nos. 88-5619, 88-5620 (CA4), pp A-333, A-494. The Court of Appeals accordingly did not consider these aspects of the subpoenas, nor do we.

B

[9, 10] It seems unlikely, of course, that a challenging party who does not know the general subject matter of the grand jury's investigation, no matter how valid that party's claim, will be able to make the necessary showing that compliance would be unreasonable. After all, a subpoena recipient "cannot put his whole life before the court in order to show that there is no crime to be investigated," Marston's, Inc. v Strand, 114

Ariz 260, 270, 560 P2d 778, 788 (1977) (Gordon, J., specially concurring in part and dissenting in part). Consequently, a court may be justified in a case where unreasonableness is alleged in requiring the Government to reveal the general subject of the grand jury's investigation before requiring the challenging party to carry its burden of persuasion. We need not resolve this question in the present case, however, as there is no doubt that respondents knew the subject of the grand jury investigation pursuant to which the business records subpoenas were issued. In cases where the recipient of the subpoena does not know the nature of the investigation, we are confident that district courts will be able to craft appropriate procedures that balance the interests of the subpoena recipient against the strong governmental interests in maintaining secrecy, preserving investigatory flexibility, and avoiding procedural delays. For example, to ensure that subpoenas are not routinely challenged as a form of discovery, a district court may require that the Government reveal the subject of the investigation to the trial court *in camera,* so that the court may determine whether the motion to quash has a reasonable prospect for success before it discloses the subject matter to the challenging party.

IV

[1d, 11] Applying these principles in this case demonstrates that the District Court correctly denied respondents' motions to quash. It is undisputed that all three companies—Model, R. Enterprises, and MFR—are owned by the same person, that all do business in the same area, and that one of the three, Model, has shipped sexually explicit materials into the Eastern District of Virginia. The District Court could have concluded from these facts that there was a reasonable possibility that the business records of R. Enterprises and MFR would produce information relevant to the grand jury's investigation into the interstate transportation of obscene materials. Respondents' blanket denial of any connection to

Virginia did not suffice to render the District Court's conclusion invalid. A grand jury need not accept on faith the self-serving assertions of those who may have committed criminal acts. Rather, it is entitled to determine for itself whether a crime has been committed. See Morton Salt Co. 338 US, at 642-643, 94 L Ed 401, 70 S Ct 357.

[12] Both in the District Court and

in the Court of Appeals, respondents contended that these subpoenas sought records relating to First Amendment activities, and that this required the Government to demonstrate that the records were particularly relevant to its investigation. The Court of Appeals determined that the subpoenas did not satisfy Rule 17(c) and thus did not pass on the First Amendment issue. We express no view on this issue and leave it to be resolved by the Court of Appeals.

The judgment is reversed insofar as the Court of Appeals quashed the subpoenas issued to R. Enterprises and MFR, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SEPARATE OPINION

Justice **Stevens,** with whom Justice **Marshall** and Justice **Blackmun** join, concurring in part and concurring in the judgment.

Federal Rule of Criminal Procedure 17(c) authorizes a federal district court to quash or modify a grand jury subpoena duces tecum "if compliance would be unreasonable or oppressive." See United States v Calandra, 414 US 338, 346, n 4, 38 L Ed 2d 561, 94 S Ct 613 (1974). This Rule requires the district court to balance the burden of compliance, on the one hand, against the governmental interest in obtaining the documents on the other.[1]

A more burdensome subpoena should be justified by a somewhat higher degree of probable relevance than a subpoena that imposes a minimal or nonexistent burden.[2] Against the procedural history of this case, the Court has attempted to define the term "reasonable" in the abstract, looking only at the relevance side of the balance. See ante, at 300, 301, 112 L Ed 2d, at 807.[3]

Because I believe that

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[1] See, e.g., In re Grand Jury Subpoena: Subpoena Duces Tecum, 829 F2d 1291, 1298 (CA4 1987); In re Grand Jury Subpoena Served upon Doe, 781 F2d 238, 250 (CA2) (en banc), cert denied sub nom. Roe v United States, 475 US 1108, 89 L Ed 2d 914, 106 S Ct 1515 (1986); In re Grand Jury Matters, 751 F2d 13, 19 (CA1 1984); In re Special April 1977 Grand Jury, 581 F2d 589, 595 (CA7), cert denied sub nom. Scott v United States, 439 US 1046, 58 L Ed 2d 705, 99 S Ct 721 (1978). Cf. Hale v Henkel, 201 US 43, 76-77, 50 L Ed 652, 26 S Ct 370 (1906) (applying similar balancing test to determine the "reasonableness" of a subpoena under the Fourth Amendment); In re Grand Jury Impaneled January 21, 1975, 541 F2d 373, 382-383 (CA3 1976) (balancing "public's interest in law enforcement and in ensuring effective grand jury proceedings" and state-created "reports privilege" in deciding whether to quash subpoena).

[2] See, e.g., In re Grand Jury Subpoena, 829 F2d, at 1296-1301 (applying heightened scrutiny in Rule 17(c) balance because of First Amendment concerns); In re Grand Jury Matters, 751 F2d, at 18 (requiring Government to show need "with some particularity" because timing of subpoena posed "such potential for harm" to defendants and their right to counsel); In re Grand Jury Proceedings, 707 F Supp 1207, 1219 (Haw 1989) (quashing subpoena because "the government has failed to proffer sufficient evidence of fraud permeating the works of the celebrity artists to justify the great magnitude of the subpoena requests"); In re Grand Jury Proceedings Witness Bardier, 486 F Supp 1203, 1214 (Nev 1980) (quashing subpoena because demand was "so onerous in its burden as to be out of proportion to the end sought"); In re Grand Jury Investigation, 459 F Supp 1335, 1343 (ED Pa 1978) (refusing to quash subpoena because "[court] cannot say that the documentation requested in this instance is excessive relative to the scope of the investigation").

[3] The Fourth Circuit, like the Court, conducted the relevancy inquiry without regard to the burden of compliance. Respondents, however, in their affidavits in support of their motions to quash, framed their relevancy ar-

this truncated approach to the Rule will neither provide adequate guidance to the district court nor place any meaningful constraint on the overzealous prosecutor, I add these comments.

The burden of establishing that compliance would be unreasonable or oppressive rests, of course, on the subpoenaed witness. This result accords not only with the presumption of regularity that attaches to grand jury proceedings, as the Court notes, see ante, at 300-301, 112 L Ed 2d, at 807, but also with the general rule that the burden of proof lies on "the party asserting the affirmative of a proposition," see, e.g., Mashpee Tribe v New Seabury Corp. 592 F2d 575, 589 (CA1), cert denied, 444 US 866, 62 L Ed 2d 90, 100 S Ct 138 (1979).

The moving party has the initial task of demonstrating to the Court that he has some valid objection to compliance. This showing might be made in various ways. Depending on the volume and location of the requested materials, the mere cost in terms of time, money, and effort of responding to a dragnet subpoena could satisfy the initial hurdle. Similarly, if a witness showed that compliance with the subpoena would intrude significantly on his privacy interests, or call for the disclosure of trade secrets or other confidential information, further inquiry would be required. Or, as in this case, the movant might demonstrate that compliance would have First Amendment implications.

The trial court need inquire into the relevance of subpoenaed materials only after the moving party has made this initial showing. And, as is true in the parallel context of pretrial civil discovery, a matter also committed to the sound discretion of the trial judge, the degree of need sufficient to justify denial of the motion to quash will vary to some extent with the burden of producing the requested information.[4]

For the

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guments in the broader context of the burden imposed by the subpoenas. Respondents noted that the subpoenas required production of virtually all their corporate records. See App in In re Grand Jury 87-3 Subpoena Duces Tecum, Nos. 88-5619, 88-5620 (CA4), p A-343, ¶ 18; id., at A-497 to A-498, ¶ 8 (hereinafter App). Respondents argued that compliance with the subpoenas would violate their rights to privacy and their rights under the First and Fourth Amendments. See id., at A-342 to A-349, ¶¶ 17, 19-31; id., at A-497, A-500 to A-503, ¶¶ 7, 14-20. And, as the Court recognizes, ante, at 9, respondents expressly contended that the First Amendment implications of the subpoenas required a heightened level of relevance. App A-345, ¶ 22; id., at A-502, ¶ 18.

[4] See, e.g., Northrop Corp. v McDonnell Douglas Corp. 243 US App DC 19, 31, 751 F2d 395, 407 (1984) ("The need of the party seeking the documents is a relevant factor in considering a claim of oppressiveness, and a case may arise where the need is great enough to overcome a claim [of burdensomeness] such as [the State Department raises] here") (citation omitted); In re Multi-Piece Rim Products Liability Litigation, 209 US App DC 416, 424-425, 653 F2d 671, 679-680 (1981) ("relevance of discovery requests" must be weighed against "oppressiveness" "in deciding whether discovery should be compelled"); United States v Balistrieri, 606 F2d 216, 221 (CA7 1979) ("The district court's decision to quash Balistrieri's discovery requests was within its discretion under the rule, especially in light of the breadth of the discovery requests in relation to the rather narrow ground of illegal surveillance upon which [his action] was based"), cert denied, 446 US 917, 64 L Ed 2d 271, 100 S Ct 1850 (1980); Marshall v Westinghouse Electric Corp. 576 F2d 588, 592 (CA5 1978) (plaintiff seeking broad range of documents "must show a more particularized need and relevance"); Litton Industries, Inc. v Chesapeake & Ohio R. Co. 129 FRD 528, 530 (ED Wis 1990) ("'If it is established that confidential information is being sought, the burden is on the party seeking discovery to establish that the information is sufficiently relevant and necessary to his case to outweigh the harm disclosure would cause'") (citation omitted); Lloyd v Cessna Aircraft Co. 430 F Supp 25, 26 (ED Tenn 1976) (requiring "special need" to justify deposition in view of short notice afforded deposed party).

reasons stated by the Court, in the grand jury context the law enforcement interest will almost always prevail, and the documents must be produced. I stress, however, that the Court's opinion should not be read to suggest that the deferential relevance standard the Court has formulated will govern decision in every case, no matter how intrusive or burdensome the request. See ante, at 301, 112 L Ed 2d, at 808. ("The Court of Appeals accordingly did not consider these aspects of the subpoenas, nor do we").

I agree with the Court that what is "unreasonable or oppressive" in the context of a trial subpoena is not necessarily unreasonable or oppressive in the grand jury context. Although the same language of Rule 17(c) governs both situations, the teaching of United States v Nixon, 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090 (1974), is not directly applicable to the very different grand jury context. Thus, I join in Parts I and II of the Court's opinion, and I am in accord with its decision to send the case back to the Court of Appeals. I also agree that the possible First Amendment implications of compliance should be considered

by that court. I would only add that further inquiry into the possible unreasonable or oppressive character of this subpoena should also take into account the entire history of this grand jury investigation, including the series of subpoenas that have been issued to the same corporations and their affiliates during the past several years, see In re Grand Jury 87-3 Subpoena Duces Tecum, 884 F2d 772, 774-775 (CA4 1989).

EDITOR'S NOTE

An annotation on "Supreme Court's construction and application of Rule 17 of Federal Rules of Criminal Procedure, pertaining to subpoenas in criminal cases," appears p 1237, infra.

[498 US 308]

ROBERT LACY PARKER, Petitioner

v

RICHARD L. DUGGER, Secretary, Florida Department of Corrections, et al.

498 US 308, 112 L Ed 2d 812, 111 S Ct 731, reh den (US) 113 L Ed 2d 271, 111 S Ct 1340

[No. 89-5961]

Argued November 7, 1990. Decided January 22, 1991.

Decision: Florida appeals court's affirmance of death sentence held invalid where court (1) incorrectly determined that trial court found no mitigating circumstances, and thus (2) failed to consider evidence of nonstatutory mitigating circumstances.

SUMMARY

An individual who, with several companions, had allegedly (1) set out to recover money owed to them for the delivery of illegal drugs, and (2) killed three people in the process, was convicted in a Florida trial court on two counts of first-degree murder and one count of third-degree murder. At his sentencing hearing, the individual presented evidence of mitigating circumstances other than those specifically listed in the state's death penalty statute, including evidence that (1) the individual had been under the influence of drugs and alcohol at the time of the killings; (2) none of the individual's companions had been sentenced to death for the killings, and one who admitted shooting one of the victims had been allowed to plead guilty to second-degree murder; (3) the individual had had a difficult childhood with an abusive, alcoholic father; and (4) the individual had a positive relationship with his own children and with his neighbors. The jury advised that the individual be sentenced to life imprisonment on both first-degree murder counts, based on its finding that the aggravating circumstances in the case were outweighed by the mitigating circumstances; but the trial judge overrode the jury's recommendation on one count and sentenced the individual to death. After carefully considering all the evidence presented at the trial and the sentencing hearing with regard to that count, the judge stated, he found that six statutory aggravating circumstances were present, that no statutory mitigating circumstances were present, and that there were "no mitigating circumstances that outweigh the aggravating circum-

Briefs of Counsel, p 1252, infra.

stances." While determining that there was insufficient evidence to support two of the six aggravating circumstances relied upon by the trial judge, the Supreme Court of Florida affirmed the death sentence on the ground that the trial judge had "found no mitigating circumstances to balance against the aggravating factors, of which four were properly applied." (458 So 2d 750). After unsuccessfully petitioning the United States Supreme Court for certiorari (470 US 1088, 85 L Ed 2d 152, 105 S Ct 1855) and seeking state collateral review, the individual filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Florida, which court granted the petition with respect to the death sentence on the ground that the failure of the trial judge to find the existence of nonstatutory mitigating circumstances, which circumstances were fairly supported by the record, rendered the death sentence unconstitutional. In reversing the District Court's judgment, the United States Court of Appeals for the Eleventh Circuit interpreted the record as indicating that the trial judge had found some nonstatutory mitigating circumstances to be present but had found them to be outweighed by the aggravating circumstances (876 F2d 1470).

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and remanded the case with instructions that the District Court order the state to initiate state court proceedings for the reconsideration of the death sentence. In an opinion by O'CONNOR, J., joined by MARSHALL, BLACKMUN, STEVENS, and SOUTER, JJ., it was held that (1) the question whether the trial judge had found any mitigating circumstances was an issue of historical fact, so that review of the Supreme Court of Florida's determination was governed by 28 USCS § 2254, under which a federal court ruling on a petition for habeas corpus is not to overturn a factual conclusion of a state court unless that conclusion is not fairly supported by the record; (2) the determination of the Florida Supreme Court that the trial judge had found no mitigating circumstances was not fairly supported by the record; and (3) the Florida Supreme Court's decision to affirm the death sentence, without considering the evidence of nonstatutory mitigating circumstances, was therefore invalid and deprived the defendant of the individualized treatment to which he was entitled under the Federal Constitution.

WHITE, J., joined by REHNQUIST, Ch. J., and SCALIA and KENNEDY, JJ., dissented, expressing the view that (1) the trial judge's statement as to mitigating circumstances was ambiguous; (2) the federal courts therefore had to defer to the Supreme Court of Florida's conclusion that the judge had found no nonstatutory mitigating circumstances; and (3) the most plausible interpretation of the trial judge's findings is that the judge determined that none of the evidence presented established a nonstatutory mitigating circumstance.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal § 1701; Criminal Law § 93 — death penalty — review by state appeals court — failure to consider mitigating circumstances — remand

1a-1k. A state appellate court's affirmance of a death sentence which a state trial judge had imposed upon a defendant convicted of first-degree murder is arbitrary and invalid because the affirmance deprives the defendant of the individualized treatment to which he is entitled under the Federal Constitution, where (1) the appellate court (a) found insufficient evidence to sustain

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5 Am Jur 2d, Appeal and Error §§ 779, 821; 21 Am Jur 2d, Criminal Law §§ 609-612, 628; 39 Am Jur 2d, Habeas Corpus § 114

9 Federal Procedure, L Ed, Criminal Procedure § 22:925; 16 Federal Procedure, L Ed, Habeas Corpus § 41:326

7 Am Jur Trials 477, Homicide; 20 Am Jur Trials 1, Federal Habeas Corpus Practice; 39 Am Jur Trials 157, Historical Aspects and Procedural Limitations of Federal Habeas Corpus

28 USCS § 2254

US L Ed Digest, Criminal Law § 93

Index to Annotations, Appeal and Error; Capital Offenses and Punishment; Habeas Corpus; Harmless and Prejudicial Error; Mitigation or Aggravation of Punishment; Sentence and Punishment

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Validity of death penalty, under Federal Constitution, as affected by consideration of aggravating or mitigating circumstances—Supreme Court cases. 111 L Ed 2d 947.

Supreme Court's views on constitutionality of death penalty and procedures under which it is imposed or carried out. 90 L Ed 2d 1001.

Supreme Court's construction and application of 28 USCS § 2254(d), which provides that in federal habeas corpus proceedings, state court's factual determinations must be presumed to be correct. 88 L Ed 2d 963.

two of the six aggravating circumstances relied upon by the trial judge, (b) sustained the death sentence on the ground that the trial judge had found no mitigating circumstances to balance against the remaining aggravating circumstances, and (c) did not consider the evidence of nonstatutory mitigating circumstances, (2) the appellate court's affirmance was based on a mischaracterization of the findings of the trial judge, who (a) had stated that no statutory mitigating circumstances had been found and that there were no mitigating circumstances that outweighed the aggravating circumstances found by the judge, and (b) had found and weighed nonstatutory mitigating circumstances before sentencing the defendant to death, and (3) the appellate court's affirmance of the defendant's sentence despite the invalidation of two aggravating circumstances (a) was not based on a reweighing of the remaining evidence, because the appellate court explicitly relied on what it took to be the trial judge's finding of no mitigating circumstances and did not conduct an independent reweighing of the circumstances, and (b) could not have been properly based on harmless-error analysis, because, although the appellate court might have determined that the elimination of two aggravating circumstances would have made no difference to the sentence given the trial judge's supposed finding of no mitigating circumstances, the trial judge must have found mitigating circumstances; consequently, the United States Supreme Court, in reversing a Federal Court of Appeals' reversal of a Federal District Court's grant of the defendant's petition for habeas corpus relief, will remand with instructions to return the case to the District Court to enter an order (1) directing the state to initiate state court proceedings so that the death sentence may be reconsidered in light of the entire record, and (2) giving the state a reasonable period of time to initiate such proceedings. (White, J., Rehnquist, Ch. J., and Scalia and Kennedy, JJ., dissented from this holding.)

Criminal Law § 93 — death penalty — aggravating and mitigating circumstances

2. Under Florida law, both the jury, in recommending whether a convicted capital offender should be sentenced to death, and the judge, in deciding whether to impose such a sentence, may consider only those aggravating circumstances that are described by the state's death penalty statute; but the judge and jury may consider any mitigating evidence, regardless of whether it goes to a statutory mitigating circumstance.

Criminal Law § 93 — death penalty — jury recommendation

3. Under Florida law, if the jury in a capital case recommends a life sentence rather than the death penalty, the trial judge may override that recommendation and impose a sentence of death only where the facts suggesting such a sentence are so clear and convincing that virtually no reasonable person could differ.

Appeal §§ 1296, 1304; Criminal Law § 93; Evidence § 850 — death penalty — consideration of mitigating evidence — findings — presumption

4a-4d. In determining the validity under the Federal Constitution of a Florida appellate court's affirmance of the death sentence which a Florida trial judge, overriding the recommendations of the jury, had imposed as the penalty for one of three murders for which the defendant had been convicted, the United States Supreme Court must assume that the trial judge, before passing sentence, had considered evidence presented by the defense as to mitigating circumstances not specifically listed in the state's death penalty statute, given that (1) the judge's sentencing order stated that he had carefully studied and considered all the evidence and testimony at trial and at advisory sentence proceedings before the jury, (2) under both federal and Florida law, a trial judge, in passing sentence in a capital case, cannot refuse to consider any mitigating evidence, (3) the trial judge had instructed the jury that in deciding whether to recommend a death sentence, it could consider not only the statutory mitigating factors, but also any other aspect of the defendant's character or record and any other circumstances of the crime, and (4) the nonstatutory mitigating evidence presented by the defense—relating to (a) the defendant's drug and alcohol intoxication, (b) the more lenient sentence given to an alleged accomplice who had actually shot the victim in question, and (c) the defendant's character and background—was of a type that the state's highest court had in other cases found sufficient to preclude an override of a jury recommendation of a noncapital sentence; also, the Supreme Court will conclude that the trial judge credited much of this evidence and found nonstatutory mitigating circumstances, given that (1) the judge, who instructed the jurors that they need be only "reasonably convinced" that a mitigating circumstance existed to consider it established, will be assumed to have applied the same standard himself, (2) the evidence as to the defendant's intoxication and his alleged accomplice's sentence was uncontroverted, (3) there was extensive evidence as to the defendant's personal history and character that might have provided some mitigation, (4) every court subsequently reviewing this record had determined that the evidence supported a finding of nonstatutory mitigating circumstances, (5) the judge did not override the jury's recommendation of life imprisonment for the defendant on a related murder count, which was more likely due to a finding of nonstatutory mitigating circumstances than to the difference between the five aggravating circumstances found as to that count and the six aggravating circumstances found as to the murder in question, and (6) the judge's failure to make any explicit reference to nonstatutory evidence in passing sentence may be explained by the fact that state law required explicit findings only as to statutory aggravating and mitigating circumstances; under these circumstances, the Florida appellate court's conclusion that the trial judge had found no mitigating circumstances is not fairly supported by the record. (White, J., Rehnquist, Ch. J., and Scalia and Kennedy, JJ., dissented in part from this holding.)

Appeal § 1299 — weight of evidence

5. To the extent that there is ambiguity in a trial court's sentencing order, an appellate court will not read the order to be against the weight of the evidence.

Appeal §§ 1453, 1650.5; Criminal Law § 93 — death sentence — appellate reweighing of circumstances — harmless error

6. In a state wherein the death penalty may be imposed only where specified aggravating circumstances outweigh all mitigating circumstances, a reviewing court, when striking one or more of the aggravating factors on which the sentencer relies, may, consistent with the Federal Constitution, reweigh the remaining evidence or conduct a harmless-error analysis.

Habeas Corpus § 121 — deference to state court findings

7a, 7b. Because the determination by a state appellate court, in affirming the death sentence imposed against a homicide defendant, as to what the trial judge had found with regard to the existence or nonexistence of nonstatutory mitigating circumstances is an issue of historical fact, depending on an examination of the sentencing order and of the transcript of the trial and sentencing hearing, and is not a legal issue, as no determination as to the legality of the sentence necessarily follows from its resolution, the deference which the United States Supreme Court owes to that determination in reviewing the death sentence on the defendant's petition for federal habeas corpus relief is that designated by 28 USCS § 2254, under which a federal court, ruling on a habeas corpus petition, is not to overturn a factual conclusion of a state court, including a state appellate court, unless that conclusion is not fairly supported by the record.

Criminal Law § 93 — death sentence

8. If a state has determined that death should be an available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not.

Criminal Law § 93 — death penalty

9. The Federal Constitution prohibits the arbitrary or irrational imposition of the death penalty.

Appeal § 1257 — death sentence — appellate review

10. Meaningful appellate review of a death sentence requires that the appellate court consider the defendant's actual record; what is important is an individualized determination on the basis of the character of the individual and the circumstances of the crime.

SYLLABUS BY REPORTER OF DECISIONS

A Florida jury convicted petitioner Parker of first-degree murder for the killings of Richard Padgett and Nancy Sheppard. At the advisory sentencing hearing, the jury found that sufficient aggravating circumstances existed to justify a death sentence as to both murders, but that sufficient mitigating circumstances existed to outweigh those aggravating factors, and therefore recommended that Parker be sentenced to life imprisonment on both counts. The trial judge, who has ultimate sentencing authority under state law, accepted the jury's recommendation for the Padgett murder, but overrode the recommendation for the Sheppard murder and sentenced Parker to death. The judge explained, inter alia, that he had found, based on a review of the evidence, six statutory aggravating circumstances as to the Sheppard murder and no statutory mitigating circumstances. He did not discuss evidence of, or reach any explicit conclusions concerning, nonstatutory mitigating evidence, but declared that "[t]here are no mitigating circumstances that outweigh the aggravating circumstances in" either count. Although concluding that there was insufficient evidence of two of the aggravating circumstances relied on by the trial judge, the State Supreme Court affirmed the death sentence, declaring that the trial court had found no mitigating circumstances to balance against the four properly applied aggravating factors. The court ruled that the facts suggesting the death sentence were "so clear and convincing that no reasonable person could differ," and therefore that judicial override of the jury's recommendation of life was appropriate under state law. The Federal District Court granted Parker's habeas corpus petition as to the imposition of the death penalty, ruling that the sentence was unconstitutional. The Court of Appeals reversed.

Held: The Florida Supreme Court acted arbitrarily and capriciously by failing to treat adequately Parker's nonstatutory mitigating evidence.

(a) Although the trial judge's order imposing the death sentence does not state explicitly what effect he gave Parker's nonstatutory mitigating evidence, it must be concluded that the judge found and weighed such evidence before imposing the sentence. The record contains substantial evidence, much of it uncontroverted, favoring mitigation. Moreover, the judge declined to override the jury's recommendation of life imprisonment for the Padgett murder, indicating that he found nonstatutory mitigating circumstances in that murder. Furthermore, the judge stated that he found no mitigating circumstances "that outweigh" aggravating circumstances, indicating that nonstatutory mitigating circumstances did, in fact, exist.

(b) Thus, the State Supreme Court erred in concluding that the trial judge found no mitigating circumstances to balance against the aggravating factors, and consequently erred in its review of Parker's sentence. Where a reviewing court in a weighing State strikes one or more of the aggravating factors on which the sentencer relies, the reviewing court may, consistent with the Constitution, reweigh the remaining evidence or conduct a harmless error analysis. Clemons v Mississippi, 494 US 738, 741, 108 L Ed 2d 725, 110 S Ct 1441. The State Supreme Court did not conduct an independent reweighing of the evidence, since it explicitly relied on what it took to be the trial judge's findings of no mitigating circumstances. Moreover, even if the court conducted a harmless error analysis, that analysis was flawed by the court's ignoring of the evidence of mitigating circumstances in the record. Although a federal court on habeas review must give deference to a state appellate court's resolution of an ambiguity in a state trial court's statement, Wainwright v Goode, 464 US 78, 83-85, 78 L Ed 2d 187, 104 S Ct 378, it need not do so where, as here, the appellate court's conclusion is not fairly supported by the record in the case.

(c) The State Supreme Court's affirmance of Parker's death sentence based upon nonexistent findings was invalid because it deprived Parker of the individualized treatment to which he is entitled under the Constitution. Clemons, supra, at 752, 108 L Ed 2d 725, 110 S Ct 1441.

876 F2d 1470, reversed and remanded.

O'Connor, J., delivered the opinion of the Court, in which Marshall, Stevens, Blackmun, and Souter, JJ., joined. White, J., filed a dissenting opinion, in which Rehnquist, C. J., and Scalia and Kennedy, JJ., joined.

APPEARANCES OF COUNSEL

Robert J. Link argued the cause for petitioner.

Carolyn M. Snurkowski argued the cause for respondents.

Briefs of Counsel, p 1252, infra.

OPINION OF THE COURT

[498 US 310]

Justice **O'Connor** delivered the opinion of the Court.

[1a] This case requires us to determine precisely what effect the Florida courts gave to the evidence petitioner presented in mitigation of his death sentence, and consequently to determine whether his death sentence meets federal constitutional requirements.

I

On the afternoon of February 6, 1982, petitioner Robert Parker and several others set off to recover money owed them for the delivery of illegal drugs. There followed a nightmarish series of events that ended in the early morning hours of February 7 with the deaths of Richard Padgett, Jody Dalton, and Nancy Sheppard.

A Duval County, Florida, grand jury indicted Parker, his former wife Elaine, Tommy Groover, and William Long for the first-degree murders of Padgett, Dalton, and Sheppard. Elaine Parker and Long entered negotiated pleas to second-degree murder. A jury convicted Groover of all three first-degree murders, and the judge sentenced him to death on two counts and life imprisonment on the third.

Parker's jury convicted him of first-degree murder for the killings of Padgett and Sheppard and third-degree murder for the Dalton killing. At the advisory sentencing hearing, Parker presented evidence in mitigation of a death sentence and argued that such evidence also had been presented at trial. The jury found that sufficient aggravating circumstances existed to justify a death sentence as to both the Padgett and Sheppard murders, but that sufficient mitigating circumstances existed that outweighed these aggravating factors. The jury therefore recommended that Parker be sentenced to life imprisonment on both first-degree counts.

The trial judge, who has ultimate sentencing authority under Florida law, accepted the jury's recommendation for the Padgett murder. The judge overrode the jury's recommendation for the Sheppard murder, however, and sentenced Parker to death. The judge's sentencing order explained

[498 US 311]

that "this Court has carefully studied and considered all the evidence and testimony at trial and at advisory sentence proceedings." App 47. After reviewing the evidence of the various aggravating and mitigating circumstances defined by Florida statute, the judge found six aggravating circumstances present as to the Sheppard murder and no statutory mitigating circumstances. In the sentencing order, the judge did not discuss evidence of, or reach any explicit conclusions concerning, nonstatutory mitigating evidence. He did conclude that "[t]here are no mitigating circumstances that outweigh the aggravating circumstances in the first count (Padgett murder) and the second count (Sheppard murder)." Id., at 61.

On direct appeal, the Florida Supreme Court affirmed Parker's convictions and sentences. Parker v State, 458 So 2d 750 (1984), cert denied, 470 US 1088, 85 L Ed 2d 152, 105 S Ct 1855 (1985). The court concluded, however, that there was insufficient evidence to support two of the aggravating circumstances that the trial judge had relied upon in sentencing Parker to death: that the Sheppard murder was "especially heinous, atrocious and cruel," and that the murder was committed during a robbery. 458 So 2d, at 754. Nonetheless, the court affirmed the death sentence, its entire written analysis consisting of the following:

> "The trial court found no mitigating circumstances to balance against the aggravating factors, of which four were properly applied. In light of these findings the facts suggesting the sentence of death are so clear and convincing that virtually no reasonable person could differ. Tedder v State, 322 So 2d 908 (Fla 1975). The jury override was proper and the facts of this case clearly place it within the class of homicides for which the death penalty has been found appropriate." Ibid.

Parker pursued state collateral review without success, and then filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Florida.

That court denied Parker's petition as to his convictions, but granted the petition as to the imposition of the death penalty. App 146. The court concluded that the trial judge had found no nonstatutory mitigating circumstances. The court also found that there was sufficient evidence in the record to support a finding of nonstatutory mitigating circumstances, and, in particular, to support the jury's recommendation of a life sentence for the Sheppard murder. Because, under Florida law, a sentencing judge is to override a jury's recommendation of life imprisonment only when "virtually no reasonable person could differ," Tedder v State, 322 So 2d 908, 910 (Fla 1975) (per curiam), the District Court concluded that the failure of the trial judge to find the presence of nonstatutory mitigating circumstances fairly supported by the record rendered the death sentence unconstitutional. App 139-142. The District Court also speculated that the trial judge might have failed even to *consider* nonstatutory mitigating circumstances, thereby violating the rule of Hitchcock v Dugger, 481 US 393, 95 L Ed 2d 347, 107 S Ct 1821 (1987). App 143. The court ordered the State of Florida to hold a resentencing hearing within 120 days, or to vacate the death sentence and impose a lesser sentence. App 146.

The Court of Appeals for the Eleventh Circuit reversed. 876 F2d 1470 (1989). That court agreed with the District Court that there was "copious evidence of nonstatutory mitigating circumstances presented by Parker during the sentencing phase." Id., at 1475, n 7. As a consequence, however, the Court of Appeals refused to read the trial judge's silence as to nonstatutory mitigating circumstances as an indication that the judge did not consider or find such circumstances: "Under the facts of this case the only reasonable conclusion is that the trial judge found at least some mitigating factors to be present, but also found that they were *outweighed* by the aggravating factors also present. In his sentencing order, the judge wrote that '[t]here are no mitigating circumstances that *outweigh* the aggravating circumstances

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in . . . the second count (Sheppard murder).' (emphasis added)." Id., at 1475. The Court of Appeals found no constitutional error in Parker's convictions or death sentence. We granted certiorari, 497 US 1023, 111 L Ed 2d 780, 110 S Ct 3270 (1990), and now reverse the judgment of the Court of Appeals and remand for further proceedings.

II

Parker presents several related challenges to his death sentence. The crux of his contentions is that the Florida courts acted in an arbitrary and capricious manner by failing to treat adequately the evidence he presented in mitigation of the sentence. This case is somewhat unusual in that we are required to reconstruct that which we are to review. The trial judge's order imposing the challenged sentence does not state explicitly what effect the judge gave Parker's nonstatutory mitigating evidence. We must first determine what precisely the trial judge found.

[2, 3] A Florida statute defines certain aggravating and mitigating circumstances relevant to the imposition of the death penalty. Fla Stat §§ 921.141(5), 921.141(6) (1985 and Supp 1990). The death penalty may be imposed only where sufficient aggravating circumstances exist that outweigh mitigating circumstances. Fla Stat § 921.141(3) (1985). A jury makes an initial sentencing recommendation to the judge; the judge imposes the sentence. §§ 921.141(2), 921.141(3). Both may consider only those aggravating circumstances described by statute. McCampbell v State, 421 So 2d 1072, 1075 (Fla 1982) (per curiam). In counterbalance, however, they may consider any mitigating evidence, whether or not it goes to a statutory mitigating circumstance. Jacobs v State, 396 So 2d 713, 718 (Fla 1981) (per curiam). If the jury recommends a life sentence rather than the death penalty, the judge may override that recommendation and impose a sentence of death only where "the facts suggesting a

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sentence of death [are] so clear and convincing that virtually no reasonable person could differ." Tedder, supra, at 910.

[1b] The jury here recommended a life sentence for the Sheppard murder. The trial judge overrode that recommendation. In his sentencing order, the judge described in detail his factfinding as to each of the eight statutory aggravating and seven statutory mitigating circumstances. The judge found six aggravating circumstances present as to the Sheppard murder, and no statutory mitigating circumstances. App 48-60. The sentencing order makes no specific mention of nonstatutory mitigating circumstances. Under "Findings of the Court," the order states: "There are no mitigating circumstances that outweigh the aggravating circumstances." Id., at 60-61.

What did the trial judge conclude about nonstatutory mitigating evidence? There is no question that Parker presented such evidence. For example, several witnesses at trial, including witnesses for the State, testified that Parker was under the influence of large amounts of alcohol and various drugs, including LSD, during the murders. Tr 1401-1402, 1497, 1540-1541, 1619, 1738-1739, 1834, 1836, 1880-1881. At the sentencing hearing, Parker's attorney emphasized to the jury that none of Parker's accomplices received a death sentence for the Sheppard murder. Billy Long, who admitted shooting Nancy Sheppard, had been allowed to plead guilty to second-degree murder. Id., at 2366, 2378, 2491-2496. Finally, numerous witnesses testified on Parker's behalf at the sentencing hearing concerning his background and character. Their testimony indicated both a difficult childhood, including an abusive, alcoholic father, and a positive adult relationship with his own children and with his neighbors. Id., at 2322-2360.

[1c, 4a] We must assume that the trial judge considered all this evidence before passing sentence. For one thing, he said he did. The sentencing order states: "Before imposing sentence, this Court has carefully studied and considered *all the* **[498 US 315]** *evidence and testimony at trial and at advisory sentence proceedings,* the presentence Investigation Report, the applicable Florida Statutes, the case law, and all other factors touching upon this case." App 47 (emphasis added). Under both federal and Florida law, the trial judge could not refuse to consider any mitigating evidence. See Jacobs, supra, at 718; Songer v State, 365 So 2d 696, 700 (Fla 1978) (per curiam), cert denied, 441 US 956, 60 L Ed 2d 1060, 99 S Ct 2185 (1979); Eddings v Oklahoma, 455 US 104, 71 L Ed 2d 1, 102 S Ct 869 (1982); Lockett v Ohio, 438 US 586, 57 L Ed 2d 973, 98 S Ct 2954 (1978) (plurality opinion). In his instructions to the jury concerning its sentencing recommendation, the judge explained that, in addition to the statutory mitigating factors, the jury could consider "[a]ny other aspect of the defendant's character or record, and any other circumstances of the crime." Tr 2506-2507. Moreover, Parker's nonstatutory mitigating evidence—drug and alcohol intoxication, more lenient sentencing for the perpetrator of the crime, character and background—was of a type that the Florida Supreme Court had in other cases found sufficient to preclude a jury override. See, for example, Norris v State, 429 So 2d 688, 690 (1983) (per curiam) (defendant claimed to be intoxicated); Buckrem v State, 355 So 2d 111, 113-114 (1978) (same); Malloy v State, 382 So 2d 1190, 1193 (1979) (per curiam) (lesser sentence for triggerman); McCampbell, supra, at 1075-1076 (background and character); Jacobs, supra, at 718 (same). The trial judge must have at least taken this evidence into account before passing sentence.

We also conclude that the trial judge credited much of this evidence, although he found that it did not outweigh the aggravating circumstances. The judge instructed the jurors at the end of the sentencing hearing that they need be only "reasonably convinced" that a mitigating circumstance exists to consider it established. Tr 2507; Florida Bar, Florida Standard Jury Instructions in Criminal Cases 81 (1981 ed). We assume the judge applied the same standard himself. He must, therefore, have found at least some nonstatutory

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mitigating circumstances. The evidence of Parker's intoxication at the time of the murders was uncontroverted. There is also no question that Long, despite being the triggerman for the Sheppard murder, received a lighter sentence than Parker. Respondent conceded this fact in oral argument before this Court. See Tr of Oral Arg 35. And, as noted, there was extensive evidence going to Parker's personal history and character that might have provided some mitigation.

[1d, 4b, 5] In addition, every court to have reviewed the record here has determined that the evidence supported a finding of nonstatutory mitigating circumstances. Both the District Court and the Court of Appeals, in reviewing Parker's habeas petition, concluded that there was more than enough evidence in this record to support such a finding. See App 141-142; 876 F2d, at 1475. We agree. We note also that the jury found sufficient mitigating circumstances to outweigh the aggravating circumstances in the Sheppard murder. The Florida Supreme Court did not make its own determination whether the evidence supported a finding of nonstatutory mitigating circumstances. See Parker, 458 So 2d, at 754, quoted supra, at 311, 112 L Ed 2d, at 820. To the extent there is ambiguity in the sentencing order, we will not read it to be against the weight of the evidence.

[1e, 4c] Perhaps the strongest indication that the trial judge found nonstatutory mitigating circumstances is that the judge overrode the jury's sentencing recommendation for the Sheppard murder, but not for the Padgett murder. The jury recommended a life sentence for both murders. The judge explicitly found six aggravating circumstances related to the Sheppard murder and five aggravating circumstances related to the Padgett murder. App 50-60. The judge found no statutory mitigating circumstances as to either murder. Id., at 48-56. Yet he sentenced parker to death for the Sheppard murder, but accepted the jury's recommendation as to the Padgett murder. If the judge had found no nonstatutory

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mitigating circumstances, he would have had nothing to balance against the aggravating circumstances for either murder, and the judge presumably would have overridden both recommendations.

It must be that the judge sentenced differentially for the two murders because he believed that the evidence in the Sheppard murder was so "clear and convincing that virtually no reasonable person could differ" about the sentence of death, see Tedder, 322 So 2d, at 910, whereas the evidence in the Padgett murder did not meet this test. Perhaps this decision was based solely on the fact that the judge had found six aggravating circumstances in the Sheppard murder but only five in the Padgett murder. Far more likely, however, is that the judge found nonstatutory mitigating circumstances, at least as to the Padgett murder. But, as the nonstatutory mitigating evidence was in general directed to both murders, there is no reason to think the judge did not find mitigation as to both.

The best evidence that the trial

judge did *not* find any nonstatutory mitigating circumstances is that the sentencing order contains detailed findings as to statutory mitigating circumstances, but makes no explicit reference to nonstatutory evidence. There is a likely explanation for this fact. By statute, the sentencing judge is required to set forth explicitly his findings as to only the statutory aggravating and mitigating circumstances. Fla Stat § 921.141(3) (1985). Florida case law at the time the trial judge entered Parker's sentencing order required no more. See Mason v State, 438 So 2d 374, 380 (Fla 1983), cert denied, 465 US 1051, 79 L Ed 2d 725, 104 S Ct 1330 (1984) (trial judge need not expressly address each nonstatutory mitigating circumstance). Only very recently has the Florida Supreme Court established a requirement that a trial court must expressly evaluate in its sentencing order each nonstatutory mitigating circumstance proposed by the defendant. See Campbell v State, 571 So 2d 415 (1990). The absence of a requirement that the sentencing order contain

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specific findings as to nonstatutory mitigating circumstances probably explains why the order here discusses only those circumstances categorized by statute. Nonstatutory evidence, precisely because it does not fall into any predefined category, is considerably more difficult to organize into a coherent discussion; even though a more complete explanation is obviously helpful to a reviewing court, from the trial judge's perspective it is simpler merely to conclude, in those cases where it is true, that such evidence taken together does not outweigh the aggravating circumstances. And so the judge did, stating that he found "no mitigating circumstances *that outweigh the aggravating circumstances.*" App 61 (emphasis added).

In light of the substantial evidence, much of it uncontroverted, favoring mitigation, the differential sentences for the Sheppard and Padgett murders, and the fact that the judge indicated that he found no mitigating circumstances "that outweigh" aggravating circumstances, we must conclude, as did the Court of Appeals, that the trial court found and weighed nonstatutory mitigating circumstances before sentencing Parker to death.

III

[1f] The Florida Supreme Court did not consider the evidence of nonstatutory mitigating circumstances. On direct review of Parker's sentence, the Florida Supreme Court struck two of the aggravating circumstances on which the trial judge had relied. The Supreme Court nonetheless upheld the death sentence because "[t]he trial court found no mitigating circumstances to balance against the aggravating factors." Parker, 458 So 2d, at 754. The Florida Supreme Court erred in its characterization of the trial judge's findings, and consequently erred in its review of Parker's sentence.

[1g, 6] As noted, Florida is a weighing State; the death penalty may be imposed only where specified aggravating circumstances outweigh all mitigating circumstances. Fla Stat § 92.141(3) (1985); McCampbell, 421 So 2d, at 1075; Jacobs,

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396 So 2d, at 718. In a weighing State, when a reviewing court strikes one or more of the aggravating factors on which the sentencer relies, the reviewing court may, consistent with the Constitution, reweigh the re-

maining evidence or conduct a harmless error analysis. Clemons v Mississippi, 494 US 738, 741, 108 L Ed 2d 725, 110 S Ct 1441 (1990). It is unclear what the Florida Supreme Court did here. It certainly did not conduct an independent reweighing of the evidence. In affirming Parker's sentence, the court explicitly relied on what it took to be the trial judge's finding of no mitigating circumstances. Parker, supra, at 754. Had it conducted an independent review of the evidence, the court would have had no need for such reliance. More to the point, the Florida Supreme Court has made it clear on several occasions that it does not reweigh the evidence of aggravating and mitigating circumstances. See, e.g., Hudson v State, 538 So 2d 829, 831 (per curiam), cert denied, 493 US 875, 107 L Ed 2d 165, 110 S Ct 212 (1989) ("It is not within this Court's province to reweigh or reevaluate the evidence presented as to aggravating or mitigating circumstances"); Brown v Wainwright, 392 So 2d 1327, 1331-1332 (1981) (per curiam).

[1h] The Florida Supreme Court may have conducted a harmless error analysis. At the time it heard Parker's appeal, this was its general practice in cases in which it had struck aggravating circumstances and the trial judge had found no mitigating circumstances. See Sireci v State, 399 So 2d 964, 971 (1981), cert denied, 456 US 984, 72 L Ed 2d 862, 102 S Ct 2257 (1982); Elledge v State, 346 So 2d 998, 1002-1003 (1977). Perhaps the Florida Supreme Court conducted a harmless error analysis here: Believing that the trial judge properly had found four aggravating circumstances, and no mitigating circumstances to weigh against them, the Florida Supreme Court may have determined that elimination of two additional aggravating circumstances would have made no difference to the sentence.

But, as we have explained, the trial judge must have found mitigating circumstances. The Florida Supreme Court's

practice in such cases —where the court strikes one or more aggravating circumstances relied on by the trial judge and mitigating circumstances are present—is to remand for a new sentencing hearing. See ibid. Moody v State, 418 So 2d 989, 995 (1982). Following Clemons, a reviewing court is not compelled to remand. It may instead reweigh the evidence or conduct a harmless error analysis based on what the sentencer actually found. What the Florida Supreme Court could not do, but what it did, was to ignore the evidence of mitigating circumstances in the record and misread the trial judge's findings regarding mitigating circumstances, and affirm the sentence based on a mischaracterization of the trial judge's findings.

[7a] In Wainwright v Goode, 464 US 78, 83-85, 78 L Ed 2d 187, 104 S Ct 378 (1983), the Court held that a federal court on habeas review must give deference to a state appellate court's resolution of an ambiguity in a state trial court statement. We did not decide in Goode whether the issue resolved by the state appellate court was properly characterized as one of law or of fact. In this case, we conclude that a determination of what the trial judge found is an issue of historical fact. It depends on an examination of the transcript of the trial and sentencing hearing, and the sentencing order. This is not a legal issue; no determination of the legality of Parker's sentence under Florida law necessarily follows from a resolution of the question of what the trial judge found.

[4d, 7b] Because it is a factual issue, the deference we owe is that designated by 28 USC § 2254 [28 USCS § 2254]. In ruling on a petition for a writ of habeas corpus, a federal court is not to overturn a factual conclusion of a state court, including a state appellate court, unless the conclusion is not "fairly supported by the record." § 2254(d)(8); Goode, supra, at 85, 78 L Ed 2d 187, 104 S Ct 378. For the reasons stated, we find that the Florida Supreme Court's conclusion that the trial judge found no mitigating circumstances is not fairly supported by the record in this case.

[498 US 321]

IV

[8, 9] "If a State has determined that the death should be an available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." Spaziano v Florida, 468 US 447, 460, 82 L Ed 2d 340, 104 S Ct 3154 (1984). The Constitution prohibits the arbitrary or irrational imposition of the death penalty. Id., at 466-467, 82 L Ed 2d 340, 104 S Ct 3154. We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally. See, e.g., Clemons, supra, at 749, 108 L Ed 2d 725, 110 S Ct 1441 (citing cases); Gregg v Georgia, 428 US 153, 49 L Ed 2d 859, 96 S Ct 2909 (1976). We have held specifically that the Florida Supreme Court's system of independent review of death sentences minimizes the risk of constitutional error, and have noted the "crucial protection" afforded by such review in jury override cases. Dobbert v Florida, 432 US 282, 295, 53 L Ed 2d 344, 97 S Ct 2290 (1977). See also Proffitt v Florida, 428 US 242, 253, 49 L Ed 2d 913, 96 S Ct 2960 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.); Spaziano, supra, 465, 82 L Ed 2d 340, 104 S Ct 3154. The Florida Supreme Court did not conduct an independent review here. In fact, there is a sense in which the court did not review Parker's sentence at all.

[1i, 10] It cannot be gainsaid that meaningful appellate review requires that the appellate court consider the defendant's actual record. "What is important . . . is an *individualized* determination on the basis of the character of the individual and the circumstances of the crime." Zant v Stephens, 462 US 862, 879, 77 L Ed 2d 235, 103 S Ct 2733 (1983). See also Clemons, 494 US, at 749, 752, 108 L Ed 2d 725, 110 S Ct 1441; Barclay v Florida, 463 US 939, 958, 77 L Ed 2d 1134, 103 S Ct 3418 (1983) (plurality opinion). The Florida Supreme Court affirmed Parker's death sentence neither based on a review of the individual record in this case nor in reliance on the trial judge's findings based on that record, but in reliance on some other nonexistent findings.

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[1j] The jury found sufficient mitigating circumstances to outweigh the aggravating circumstances and recommended that Parker be sentenced to life imprisonment for the Sheppard murder. The trial judge found nonstatutory mitigating circumstances related to the Sheppard murder. The judge also declined to override the jury's recommendation as to the Padgett murder, even though he found five statutory aggravating circumstances and no statutory mitigating circumstances related to that crime. The Florida Supreme Court then struck two of the aggravating circumstances on which the trial judge had relied. On these facts, the Florida Supreme Court's affirmance of Parker's death sentence based on four aggravating circumstances and the trial judge's "finding" of no mitigating circumstances was arbitrary.

This is not simply an error in assessing the mitigating evidence. Had the Florida Supreme Court conducted its own examination of the trial and sentencing hearing records and concluded that there were no mitigating circumstances, a different question would be presented. Similarly, if the trial judge had found no mitigating circumstances and the Florida Supreme Court had relied on that finding, our review would be very different. Cf. Lewis v Jeffers, 497 US 764, 111 L Ed 2d 606, 110 S Ct 3092 (1990). But the Florida Supreme Court did not come to its own independent factual conclusion, and it did not rely on what the trial judge actually found; it relied on "findings" of the trial judge that bear no necessary relation to this case. After striking two aggravating circumstances, the Florida Supreme Court affirmed Parker's death sentence without considering the mitigating circumstances. This affirmance was invalid because it deprived Parker of the individualized treatment to which he is entitled under the Constitution. See Clemons, supra, at 752, 108 L Ed 2d 725, 110 S Ct 1441.

V

[1k] We reverse the judgment of the Court of Appeals and remand with instructions to return the case to the District

Court to enter an order directing the State of Florida to initiate appropriate proceedings in state court so that Parker's death sentence may be reconsidered in light of the entire record of his trial and sentencing hearing and the trial judge's findings. The District Court shall give the State a reasonable period of time to initiate such proceedings. We express no opinion as to whether the Florida courts must order a new sentencing hearing.

As to Parker's remaining questions presented to this Court, his petition for a writ of certiorari is dismissed as improvidently granted.

It is so ordered.

SEPARATE OPINION

Justice **White,** with whom The **Chief Justice,** Justice **Scalia,** and Justice **Kennedy** join, dissenting.

"It is not our function to decide whether we agree with the majority of the advisory jury or with the trial judge and the Florida Supreme Court." Spaziano v Florida, 468 US 447, 467, 82 L Ed 2d 340, 104 S Ct 3154 (1984). The Court long ago gave up second guessing state supreme courts in situations such as the one presented here. Nevertheless, the Court today undertakes and performs that task in a manner that is inconsistent with our precedents and with the Court's role as the final arbiter of federal constitutional issues of great importance. Therefore, I dissent.

The entire weight of the Court's opinion rests on a reconstruction of the record the likes of which has rarely, if ever, been performed before in this Court. Once armed with its dubious reconstruction of the facts, the Court proceeds to determine that the Florida Supreme Court's conclusion that the trial judge found no nonstatutory mitigating circumstances is not "'fairly supported by the record.'" Ante, at 320, 112 L Ed 2d, at 826 (quoting 28 USC § 2254(d)(8) [28 USCS § 2254(d)(8)]). The Court then relies on that determination to assert that the Florida Supreme Court "did not conduct an independent review here," ante, at 321, 112 L Ed 2d, at 826, even though the Court admits that the Florida Supreme Court's review was at least thorough enough to cause it to

strike down two aggravating factors found by the trial judge. Ante, at 322, 112 L Ed 2d, at 827. The Court ultimately concludes that Parker was deprived of "meaningful appellate review" which, for reasons not fully explained, apparently entitles him to relief under the Eighth Amendment of the Constitution. As I see it, these actions conflict with two lines of the Court's precedent.

First, the Court's application of the "fairly supported by the record" standard of § 2254(d)(8) is inconsistent with the way that standard has been applied in other cases and gives far too little deference to state courts that are attempting to apply their own law faithfully and responsibly. For example, in Wainwright v Goode, 464 US 78, 78 L Ed 2d 187, 104 S Ct 378 (1983) (per curiam), a Florida case remarkably similar to this one, the Court indicated that § 2254(d)(8) requires federal habeas courts to give considerable deference to factual determinations made by *any* state court. In Goode, there was a question whether the trial judge who had sentenced the defendant to death had relied on an aggravating factor that was not proper for him to consider under Florida law. In deciding the defendant's appeal, the Florida Supreme Court concluded that the trial judge had not actually relied on the improper factor. On federal habeas review, a Federal District Court agreed with the Florida Supreme Court but the Court of Appeals reversed the death sentence. This Court, after reviewing the record, determined that, at best, the trial court record was ambiguous on this issue and for that very reason we held that "the Court of Appeals erred in substituting its view of the facts for that of the Florida Supreme Court." 464 US, at 85, 78 L Ed 2d 187, 104 S Ct 378.

There is little if any factual distinction between this case and Goode. Here, the trial judge stated that he found "no mitigating circumstances that outweigh the aggravating circumstances." App 61. The majority apparently seizes upon the ambiguity inherent in the judge's use of the word "that," arguing that what he must have meant was that there

were mitigating circumstances but that they did not outweigh the aggravators rather than meaning that no mitigating circumstances existed at all.[1] The Florida Supreme

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[1] Apparently, the Court would agree with the Florida Supreme Court's interpretation of the trial court's order if the judge had simply said that there are no "mitigating circumstances *to* outweigh the aggravating circumstances." Instead of the word "to" he used the

Court obviously interpreted his statement in the latter fashion.

To state the Court's argument is to refute it. It is clear that the trial judge's statement is ambiguous, as was the case in Goode. The fact that the Justices of this Court cannot agree as to the meaning of the trial judge's statement is strong evidence that the statement is at least ambiguous. Moreover, it is likely that the judge—in following the statutory requirement that he make the weighing determination in writing, see Fla Stat § 921.141(3) (1985)—was simply tracking statutory language which requires him, if he chooses to impose a sentence of death, to find "[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances." § 921.141(3)(b). That statement itself is ambiguous because it does not require the trial court to specify whether mitigating circumstances exist but are outweighed, or whether there simply are no such circumstances. I therefore see no reason to disturb the Florida Supreme Court's conclusion that the trial court found that no nonstatutory mitigating circumstances had been established.

[498 US 326]

Our recent decision in Lewis v Jeffers, 497 US 764, 111 L Ed 2d 606, 110 S Ct 3092 (1990), confirms that this Court traditionally gives great deference to state-court determinations such as the one at issue here. In Jeffers, we rejected the contention that federal courts should second-guess state-court findings regarding the existence of aggravating factors and instead held that the question for federal habeas courts is only whether any rational factfinder could have found the factor to be established. Id., at 780-781, 111 L Ed 2d 606, 110 S Ct 3092. I see no reason to differentiate between state-court conclusions regarding mitigating circumstances as opposed to those regarding aggravating factors. Moreover, as the Court expressly acknowledged in both Goode and Jeffers, the deferential review that is required does not vary depending on the level at which the findings are made in state court; it is the same whether a trial court or the state supreme court makes the finding. Goode, supra, at 85, 78 L Ed 2d 187, 104 S Ct 378; Jeffers, supra, at 783, 111 L Ed 2d 606, 110 S Ct 3092.

Even more troubling in this case is the Court's creation of a new and unexplained "meaningful appellate review" standard for federal courts to apply in habeas proceedings. The Court suggests that the Florida Supreme Court's "error" in "misreading" the trial judge's findings is conclusive evidence that the court did not independently review Parker's claims and that this failure rendered Parker's sentence "arbitrary" in violation of the Eighth Amendment to the Constitution.

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word "that" and the Court seizes upon that fact to reach its conclusion that he must have found some mitigating circumstances to exist. Ante, at 318, 112 L Ed 2d, at 824. The Court's semantic acrobatics are not well taken. The trial judge's use of the word "that" obviously could mean either that (1) there were no mitigating circumstances at all (and by definition they could not outweigh the aggravating circumstances) or (2) there were mitigating circumstances but they were outweighed. That being so, the statement is obviously ambiguous and the Court's creative reconstruction of the record in its desperate stretch to reverse Parker's sentence is contrary to our cases as well as extremely inappropriate and ill advised.

This holding rests on a faulty assumption about the legal nature of the Florida Supreme Court's review of the trial court's findings[2] and in any event finds no support in our

cases. The Court previously has held that a state appellate court's interpretation of a trial court's remarks or a state court's finding that particular aggravating circumstances exist, even if considered a *legal* issue as opposed to a factual determination, is an issue of state law which is essentially unreviewable in federal court. Goode, 464 US, at 84, 78 L Ed 2d 187, 104 S Ct 378; Jeffers, supra, at 783, 111 L Ed 2d 606, 110 S Ct 3092. It is axiomatic that in general mere errors of state law are not the concern of this Court, Gryger v Burke, 334 US 728, 731, 92 L Ed 1683, 68 S Ct 1256 (1948); Barclay v Florida, 463 US 939, 77 L Ed 2d 1134, 103 S Ct 3418 (1983); Goode, supra, at 86, 78 L Ed 2d 187, 104 S Ct 378; Pulley v Harris, 465 US 37, 41, 79 L Ed 2d 29, 104 S Ct 871 (1984); Jeffers, supra, at 780, 111 L Ed 2d 606, 110 S Ct 3092, and that the "views of the State's highest court with respect to state law are binding on the federal courts." Goode, supra, at 84, 78 L Ed 2d 187, 104 S Ct 378 (citing cases); Clemons v Mississippi, 494 US 738, 747, 108 L Ed 2d 725, 110 S Ct 1441 (1990). The Court today suggests that the Eighth Amendment will have been violated any time a federal court decides that a state appellate court has committed an error of state law in a capital case or has not rigorously followed some state appellate procedure. The Court points to no cases supporting this radical revision of our Eighth Amendment jurisprudence.

Here, the only "error" the Court identifies is the Florida Supreme Court's "misreading" of the trial court's findings. The Court does not conclude that the trial court failed or refused to consider Parker's evidence of nonstatutory mitigating factors.[3] Cf. Hitchcock v Dugger, 481 US 393, 95 L Ed 2d 347, 107 S Ct 1821 (1987). Indeed, it notes that "he said he did." Ante, at 314, 112 L Ed 2d, at 822. Absent such a conclusion, it is difficult to see how any "error" here could have been of federal constitutional dimensions. The Eighth Amendment "does not, by its terms, regulate the procedures of sentencing as opposed to the substance of punishment."

Walton v Arizona, 497 US 639, 670, 111 L Ed 2d 511, 110 S Ct 3047 (1990) (Scalia, J., concurring in part and concurring in judgment). "Thus, the procedural elements of a sentencing scheme come within the prohibition, if at all, only when they are of such a nature as *systematically* to render the infliction of a cruel punishment 'unusual.'" Ibid. (emphasis added). Therefore, even were I to accept the Court's dubious reconstruction of the factual record in this case, I see no constitutional infirmity in the Florida Supreme Court's judgment.

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[2] The Court's holding also rests upon the faulty factual assumption that the Florida Supreme Court never considered Parker's evidence of nonstatutory mitigating circumstances. In both his opening brief before that court and in his petition for rehearing, Parker extensively argued that his evidence established the existence of nonstatutory mitigating circumstances. See Brief for Appellant in No. 63,7000 (Fla Sup Ct), pp 73, 77-79; Reply Brief for Appellant 23-25; Petition for Rehearing 1-5. Thus, it is preposterous to conclude that the Florida Supreme Court was unaware of this evidence or that it failed to consider it.

[3] This in fact was Parker's initial argument before the Florida Supreme Court. See Brief for Appellant in No. 63,700, p 82 ("Nowhere in the sentencing order is there any indication that the court considered any nonstatutory mitigating factors"). See also id., at 73, 77-79, 82-83. Therefore, not even Parker interpreted the trial court's findings in the manner the Court now suggests is the only plausible interpretation.

Of course, entirely apart from the dubious legal propositions relied upon by the Court today, the Court's house of cards topples if in fact the trial judge's statements can plausibly be interpreted as indicating that he found no nonstatutory mitigating circumstances to exist. In his written sentencing order, the trial judge premised his discussion of aggravating and mitigating circumstances with the following statement:

> "Before imposing sentence, this Court has carefully studied and considered all the evidence and testimony at trial and at advisory sentence proceedings, the presentence Investigation Report, the applicable Florida Statutes, the case law, and all other factors touching upon this case." App 47.

The trial court ultimately concluded that "[t]here are no mitigating circumstances that outweigh the aggravating circumstances." Id., at 61. The Court concedes that the trial court's prefatory statement indicates that the judge did in fact consider the evidence of nonstatutory mitigating circumstances presented by Parker, ante, at 314-315, 112 L Ed 2d, at 822, but nonetheless asserts that his concluding statement *cannot* be interpreted to mean that he did not find any nonstatutory mitigating circumstances to exist. As explained above, the Court—hard as it may try—cannot plausibly escape the fact that the statement is ambiguous. Accordingly, as noted above, under Wainwright v Goode, supra, federal courts are

required to defer to the Florida Supreme Court's interpretation of the trial court's findings.

Furthermore, there is nothing implausible about the interpretation the Florida Supreme Court gave to the trial court's order. The Court asserts that the trial judge must have found "drug and alcohol intoxication, more lenient sentencing for the perpetrator of the crime, [and Parker's] character and background," ante, at 315, 112 L Ed 2d, at 822, as nonstatutory mitigating circumstances, and that "the strongest indication that the trial judge found nonstatutory mitigating circumstances is that the judge overrode the jury's sentencing recommendation for the Sheppard murder, but not for the Padgett murder." Ante, at 316, 112 L Ed 2d, at 823. The latter proposition, according to the Court, flows from the fact that although the mitigating evidence with respect to both murders was the same, the judge overrode only one of the sentences. The Court reasons that if the trial judge had actually found that there were no mitigating circumstances in either case, then he surely would have overrridden both life sentences. Ante, at 316-317, 112 L Ed 2d, at 823-824.

This reasoning ignores the differences between the two crimes. The trial court found six aggravating circumstances with respect to the Sheppard murder and five with respect to the Padgett murder. Although superficially that difference may not appear very significant, in reality it is, because the aggravating circumstance that the court found present in the Sheppard murder but not in the Padgett murder was that the Sheppard murder was "committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody." App 57. It cannot be seriously disputed that this was the primary, if not sole, motive for killing Nancy Sheppard. This factor goes to the very nature of the Sheppard murder and readily distinguishes it from the Padgett murder.

Padgett was killed in a dispute over payment for illegal drugs. After Tommy Groover and Parker confronted Padgett about his drug debts, they took him to a junkyard

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"where Groover and Padgett engaged in a fist fight." Id., at 40. They then drove Padgett to a deserted area and "Groover shot Padgett to death," ibid., with Parker present. The trial court found that Parker and "Groover toyed with their victim for hours—as a cat with a mouse." Id., at 59. Thus, it is clear that Groover was a willing participant in the Padgett murder and that he alone actually killed the victim.

By contrast, Sheppard, a teenager, was essentially an innocent bystander who had no connection to Parker other than that her boyfriend was Padgett. Parker and his accomplices tricked her into accompanying them to the scene of the Padgett murder where they brutally killed her in a pathetic attempt to avoid detection for the Padgett murder. On Parker's orders, William Long shot Sheppard in the head as she knelt down near Padgett's body. Id., at 58, 59. Parker had threatened to kill Long if he did not shoot Sheppard, see id., at 56, 58, 59, a threat driven home by the fact that Parker had previously been convicted and imprisoned for shooting Long, see Tr 1257-1259, 1340, 1884, 1888, and Parker himself slit Sheppard's throat to insure that the job was done. App 58, 59. It is not necessary to resort to the imaginative stretch the Court engages in today to see why the trial court might have chosen to override the jury recommendation for the Sheppard murder but not the Padgett murder.

Likewise, an examination of the record reveals why neither the trial court nor the Florida Supreme Court "must" have found nonstatutory mitigating circumstances sufficiently established to require weighing against the aggravating circumstances. The Court's reliance on the disparity in the sentence Parker's accomplice, Long, received is nothing more than another creative reconstruction of the record. The State's theory at trial was that Long feared Parker and that he shot Sheppard only after Parker threatened to kill him if he did not kill Sheppard. In its written sentencing order, the trial court specifically found that Parker "forced

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William Long to shoot Nancy Sheppard," id., at 56, that he made "threats to kill Long," ibid., that he "threatened and forced William Long to shoot Nancy Sheppard," id., at 58, and then Parker "cut her throat and took her ring and necklace," ibid., and finally that Parker "ordered William Long to shoot Nancy or himself be killed," and that after Long shot her, Parker "screamed 'shoot her again, shoot her again.' " Id., at 59. As noted previously, the idea that Parker could effectively threaten Long is made more credible by the fact that Parker had previously been convicted and imprisoned for shooting Long. Tr 1257-1259, 1340, 1884, 1888. Incredibly, without even suggesting that these findings of the trial court are erroneous, the Court asserts that Long was more culpable with regard to the Sheppard murder than Parker and that his more lenient sentence therefore should be a mitigating circumstance in Parker's case.[4] Ante, at 316, 112 L Ed 2d, at 823. Neither the record nor common sense supports that assertion.

The Court also suggests that the trial judge must have found "drug and alcohol intoxication" and Parker's "character and background," ante, at 315, 112 L Ed 2d, at 822, as nonstatutory mitigating circumstances. Again, however, the record compels no such conclusion. With respect to the "intoxication" circumstance, all but one of the references the Court makes to the trial transcript involve either inconclusive testimony by various witnesses being questioned by Parker's counsel in an obvious

attempt to establish that Parker was intoxicated on drugs or alcohol, see id., at 1401-1402, 1497, 1540-1541, 1619, 1738, or the self-serving testimony of Parker himself. See Tr 1834, 1880-1881.

Furthermore, this testimony is not corroborated by any physical or medical evidence, and it is for the most part inconclusive and equivocal. For example, when Long was asked whether Parker and some of his companions were high at the time they went to get Nancy Sheppard, he replied "[a]s far as I know. I didn't ask them but they seemed like they were." Id., at 1402. Denise Long, who was visited by Parker and Tommy Groover after the murders had been committed, was asked whether Parker and Groover were high when she saw them. Her response was "[w]ell, there's a difference in being high and just like you are hung over. They looked like they were just hung over from being high or drunk." Id., at 1619. In fact, the State recalled one witness, Lewis Bradley, who had seen Parker and Groover after the murder and he testified that "they seemed like they had been drinking a couple of beers or something, but they seemed like they had control of theirselves." Id., at 1632.

As counsel for the State urged at oral argument, the trial court reasonably could have concluded that there was insufficient evidence to show that Parker was intoxicated on drugs or alcohol at the time of the crimes. Tr of Oral Arg 34. There was testimony suggesting that Parker and his companions had been drinking or had taken some drugs at some point during the time period leading up to the murders, but there was no conclusive evidence that Parker was in fact intoxicated or that his actions were in any way affected by drugs or alcohol.[5] Similarly, the persuasiveness of Parker's

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[4] The Court's statement that the State "conceded this fact in oral argument before this Court," ante, at 316, 112 L Ed 2d, at 823, is misleading. What the State's counsel said in response to questions regarding the existence of this nonstatutory mitigating circumstance was that different defendants did receive different sentences but the State's counsel ultimately answered that "[t]he trial judge in this case—I think he took it into account and found that it was not a valid nonstatutory mitigating circumstance based on the facts and Mr. Parker's participation in the Nancy Sheppard murder." Tr of Oral Arg 36. The State did concede the fact that Long "got a life sentence," id., at 35, but it certainly did not concede, as the Court implies, that the nonstatutory mitigating circumstance had been established.

"character and background" evidence depended entirely upon the credibility of witnesses who had a definite interest in seeing that Parker was not sentenced to death.[6] I cannot say that the trial judge would be in error if he did not credit these submissions as establishing nonstatutory mitigating circumstances.

Finally, the Court attempts to explain away the trial court's failure to discuss any nonstatutory mitigating circumstances by suggesting that the judge did not discuss such circumstances because he was not required by statute to make written findings regarding them. Ante, at 317, 112 L Ed 2d, at 823-824. This is a strange suggestion, particularly in light of the Court's assertion that the judge's statement that "there are no mitigating circumstances that outweigh the aggravating circumstances" means that the judge found nonstatutory mitigating circumstances but determined that they were outweighed. If that were the case, and the trial court had found nonstatutory mitigating circumstances sufficient to merit "weighing," it

would be most reasonable to expect the judge to discuss those circumstances in the sentencing order, whether or not state law required written findings regarding nonstatutory mitigating circumstances. The most plausible interpretation of the trial court's findings is that the court considered the evidence presented and determined that none of it rose to the level of establishing a nonstatutory mitigating circumstance to weigh against the numerous statutory aggravating circumstances.[7]

I cannot countenance the Court's radical departure from our prior cases and cannot agree with its imaginative reconstruction of the record in this case. Therefore, I dissent and would affirm the judgment of the Court of Appeals.[8]

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[5] It is not insignificant that in the trial court Parker argued the statutory mitigating circumstance that his capacity to appreciate the criminality of his conduct, or to conform his conduct to the requirements of the law, was substantially impaired. Fla Stat § 921.141(6)(f) (1985 and Supp 1990). The basis for this alleged impairment was intoxication on drugs and alcohol. Tr 2481-2483. Defense counsel incredibly asserted that Parker "had drunk some *four cases* of beer" the night of the murders and Parker's drunkenness was "why Elaine [Parker's wife] drove." Id., at 2482 (emphasis added). With respect to this statutory mitigating circumstance, the trial court found:

"Never, at any time, was it contended that the defendant was insane or incompetent at the time of the crime or at trial—nor was there any evidence or testimony that he was substantially impaired in his ability to appreciate the criminality of his conduct or to conform it to the requirements of the law.

. . . . .

"The defendant not only appreciated the criminality of his conduct—but acting on that appreciation, he murdered two other persons to prevent disclosure of the first murder.

. . . . .

"Although the defendant was examined by his private psychiatrist, there was no testimony or evidence that his ability to conform his conduct to the requirements of the law was substantially *or even slightly* impaired." App 52-53 (emphasis added).

[6] Witnesses testifying as to Parker's background and character included his mother, grandmother, sister, and a cousin.

[7] Once it is recognized that the Florida Supreme Court's interpretation of the trial court's findings is plausible and must be deferred to, then that court's action in affirming Parker's death sentence comports with our cases, see Barclay v Florida, 463 US 939, 955, 77 L Ed 2d 1134, 103 S Ct 3418 (1983), and there is no Clemons v Mississippi, 494 US 738, 108 L Ed 2d 725, 110 S Ct 1441 (1990), problem.

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[8] Although I would affirm the judgment of the Court of Appeals, I would do so for reasons different than those relied upon by that court.

[498 US 335]

UNITED STATES, Petitioner

v

DARLINA K. FRANCE

498 US 335, 112 L Ed 2d 836, 111 S Ct 805, reh den (US) 113 L Ed 2d 233, 111 S Ct 1125

[No. 89-1363]

Argued October 2, 1990. Decided January 22, 1991.

APPEARANCES OF COUNSEL

William C. Bryson argued the cause for petitioner.
Michael R. Levine argued the cause for respondent.

PER CURIAM

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The judgment of the United States Court of Appeals for the Ninth Circuit is affirmed by an equally divided court.

Justice **Souter** took no part in the consideration or decision of this case.

Same case below, 886 F2d 223.

[498 US 336]

OHIO, Petitioner

v

EDIBERTO HUERTAS

498 US 336, 112 L Ed 2d 837, 111 S Ct 805, reh den 498 US 1115, 112 L Ed 2d 1109, 111 S Ct 1027

[No. 89-1944]

Argued January 16, 1991. Decided January 22, 1991.

APPEARANCES OF COUNSEL

Jonathan E. Rosenbaum argued the cause for petitioner.
Joann Bour-Stokes argued the cause for respondent.

PER CURIAM

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The writ of certiorari is dismissed as improvidently granted.

Same case below, 51 Ohio St 3d 22, 553 NE2d 1058.

MEMORANDUM CASES

No. 90-952. Janice G. Clark, et al., Appellants v Charles Roemer, Governor of Louisiana, et al.

498 US 1060, 112 L Ed 2d 838, 111 S Ct 775.

January 18, 1991. Appeal from the United States District Court for the Middle District of Louisiana. The motion of appellants to expedite consideration of the statement as to jurisdiction is granted. In this case probable jurisdiction is noted.

Same case below, 751 F Supp 586.

No. 90-368. Sheldon Baruch Toibb, Petitioner v Stuart J. Radloff

498 US 1060, 112 L Ed 2d 838, 111 S Ct 775.

January 18, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit granted.

Same case below, 902 F2d 14.

No. 90-757. Ronald Chisom, et al., Petitioners v Charles E. Roemer, Governor of Louisiana, et al.

No. 90-1032. United States, Petitioner v Charles E. Roemer, Governor of Louisiana, et al.

498 US 1060, 112 L Ed 2d 838, 111 S Ct 775.

January 18, 1991. The motion of petitioners in No. 90-757 to expedite consideration of the petition for a writ of certiorari in No. 90-757 is granted. The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 917 F2d 187.

No. 90-813. Houston Lawyers' Association, et al., Petitioners v Attorney General of Texas, et al.

No. 90-974. League of United Latin American Citizens, et al., Petitioners v Attorney General of Texas, et al.

498 US 1060, 112 L Ed 2d 838, 111 S Ct 775.

January 18, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Fifth Circuit granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 914 F2d 620.

No. 89-954. Montedoro-Whitney Corporation, Petitioner v Marsh-McBirney, Inc.

498 US 1061, 112 L Ed 2d 838, 111 S Ct 775.

January 22, 1991. On petition for

writ of certiorari to the United States Court of Appeals for the Federal Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Federal Circuit for further consideration in light of Firs-Tier Mortgage Company v Investors Mortgage Insurance Company, 498 US 269, 112 L Ed 2d 743, 111 S Ct 648 (1991).

Same case below, 882 F2d 498.

No. 90-552. Oscar Diaz-Albertini, Petitioner v United States

498 US 1061, 112 L Ed 2d 839, 111 S Ct 776.

January 22, 1991. On petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed December 12, 1990, and asserted in his brief for the United States filed February 27, 1990, in No. 89-1040, Chappell v United States, 494 US 1075, 108 L Ed 2d 931, 110 S Ct 1800 (1990).

Chief Justice Rehnquist, with whom Justice Scalia and Justice Kennedy join, dissenting.

The Court vacates the judgment of the Court of Appeals for the Tenth Circuit and remands for "further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed December 12, 1990, and asserted in his brief for the United States filed February 27, 1990, in No. 89-1040, Chappell v United States." The Solicitor General, however, has taken the position that the judgment and reasoning of the Court of Appeals were correct and that certiorari should be denied. The Court's disposition fails to provide the Court of Appeals with any useful guidance on remand, leaving that court with the task of spending scarce judicial resources trying to divine what we mean. I therefore dissent.

Petitioner filed a motion under 28 USC § 2255 [28 USCS § 2255] seeking to vacate a sentence previously imposed on the ground that he had been denied effective assistance of counsel by his trial counsel's failure to raise a juror-bias claim until after the trial.

The Court of Appeals affirmed the District Court's denial of relief, holding that petitioner was procedurally barred from raising his claim of ineffective assistance of trial counsel on collateral attack. App to Pet for Cert A1-A6. The court reasoned that the claim should have been raised on direct appeal because petitioner was represented by new counsel on direct appeal and because appellate counsel had "all the information available to him necessary to frame a claim of ineffective assistance of counsel." Id., at A5. Because petitioner had not shown "cause" for his failure to raise the issue on direct appeal, the court concluded that he was barred from raising it under § 2255.

Petitioner then filed a petition for rehearing, arguing that the panel should reconsider its decision in light of this Court's disposition of the certiorari petition in Chappell v United States, 494 US 1075, 108 L Ed 2d 931, 110 S Ct 1800 (1990). In Chappell, the United States Court of Appeals for the Seventh Circuit had held that the defendant was barred from raising a claim of ineffective assistance of trial counsel in a § 2255 motion because he had been represented by new counsel on direct appeal and therefore could have raised the claim at that time. Chappell v United States, 878 F2d 384 (1989) (judgt order). In response to the petition for certiorari, the Solicitor General submitted a brief on behalf of the United States which stated that it was the position of the United States that claims of ineffective assistance of counsel ordinarily should be raised for the first time on collateral attack under § 2255 rather than on direct appeal. The Solicitor General further stated that where claims of ineffective assistance of trial counsel are to be raised in a § 2255 motion, a failure to raise such a claim should not constitute procedural default. The Court granted the petition for certiorari in Chappell, vacated the judgment of the Court of Appeals, and remanded to that court for further consideration in light of the position taken by the United States in its brief.

In this case, the Court of Appeals denied the petition for rehearing without requesting a response from the United States. Petitioner then filed a petition for certiorari, arguing that we should grant the petition, vacate the judgment of the Tenth Circuit, and remand for further consideration in light of the position taken by the United States in Chappell. However, in his brief for the United States in opposition, the Solicitor General recommended that the Court *deny* the petition. The Solicitor General asserted that this case was distinguishable from Chappell because "[h]ere, a hearing was held in the district court, in connection with petitioner's motion for a new trial, on the circumstances surrounding the actions of trial counsel that form the basis for petitioner's ineffective assistance of counsel claim, and the record therefore would have enabled petitioner's new counsel to raise the issue on direct appeal." Brief in Opposition 9. The Solicitor General concluded that "[b]ecause the record that was developed in the district court apparently would have been adequate for the court of appeals to address the ineffective assistance of trial counsel claim if petitioner had raised it on direct appeal, and because there was no impediment to petitioner's doing so (since he was represented by new counsel on appeal), the holding by the court below that petitioner is barred from raising his Sixth Amendment claim on collateral attack in the particular circumstances of this case is neither unreasonable nor unfair." Id., at 13.

I have previously questioned the wisdom of automatically vacating a Court of Appeals judgment favorable to the Government when the Solicitor General confesses error in this Court, See Mariscal v United States, 449 US 405, 406, 66 L Ed 2d 616, 101 S Ct 909 (1981) (Rehnquist, J., dissenting), or of vacating a Court of Appeals' judgment in favor of the Government when the Solicitor General concedes that the analysis of the Court of Appeals may have been wrong but considers the result correct. See Alvarado v United States, 497 US 543, 545, 111 L Ed 2d 439, 110 S Ct 2995 (1990) (Rehnquist, C. J., dissenting). Today the Court carries these unfortunate practices to new lengths: The Solicitor General has neither confessed error nor questioned the reasoning of the court below, but instead has taken the position that the reasoning and judgment of the Court of Appeals were correct and that certiorari should be denied.

I am at a loss to understand what purpose is served by the Court's decision today. If the Court means what it says, it will have wasted the time of the litigants in the Court of Appeals; the Solicitor General takes the position that this case is distinguishable from Chappell and that the judgment of the Court of Appeals was therefore correct. If the Court means something else, it should say so expressly, rather than leaving it to judges who are just as busy as we are to do what can best be described as read tea leaves.

No. A-506. Timothy E. Finley, Applicant v South Carolina

498 US 1063, 112 L Ed 2d 841, 111 S Ct 777.

January 22, 1991. The application for stay, addressed to Justice Marshall and referred to the Court, is denied.

No. A-540. Carnival Cruise Lines, Applicant v Superior Court of California, County of Los Angeles (Mildred Williams, et al., Real Parties in Interest)

498 US 1064, 112 L Ed 2d 841, 111 S Ct 778.

January 22, 1991. The application to stay proceedings in the Superior Court of California, County of Los Angeles, case Nos. SOC 96347 and SOC 96301, presented to Justice O'Connor, and by her referred to the Court, is granted pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this order is to terminate automatically. In the event the petition for a writ of certiorari is granted, this order is to remain in effect pending the issuance of the mandate of this Court to the Court of Appeal of California, Second District, Nos. B050142 and B050255.

No. A-541. City of Yonkers, Applicant v United States, et al.

498 US 1064, 112 L Ed 2d 841, 111 S Ct 778.

January 22, 1991. The application for an injunction or stay of orders of the United States District Court for the Southern District of New York, presented to Justice Marshall, and by him referred to the Court, is denied.

No. D-938. In the Matter of Disbarment of Gregory F. Ireland

498 US 1064, 112 L Ed 2d 842, 111 S Ct 778.

January 22, 1991. Disbarment order entered.

No. D-939. In the Matter of Disbarment of Carl M. Mazzocone

498 US 1064, 112 L Ed 2d 842, 111 S Ct 778.

January 22, 1991. Disbarment order entered.

No. D-941. In the Matter of Disbarment of J. Mack Ausburn

498 US 1064, 112 L Ed 2d 842, 111 S Ct 778.

January 22, 1991. Disbarment order entered.

No. D-942. In the Matter of Disbarment of Jon Gregory Logan

498 US 1064, 112 L Ed 2d 842, 111 S Ct 778.

January 22, 1991. Disbarment order entered.

No. D-943. In the Matter of Disbarment of Bruce Cameron Fraser

498 US 1064, 112 L Ed 2d 842, 111 S Ct 779.

January 22, 1991. Disbarment order entered.

No. D-950. In the Matter of Disbarment of Norman Bie, Jr.

498 US 1064, 112 L Ed 2d 842, 111 S Ct 779.

January 22, 1991. Disbarment order entered.

No. D-965. In the Matter of Disbarment of Hal I. Lackey

498 US 1064, 112 L Ed 2d 842, 111 S Ct 779.

January 22, 1991. It is ordered that Hal I. Lackey, of Silver Spring, Maryland, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-966. In the Matter of Disbarment of Raymond Bamidele Thompson

498 US 1064, 112 L Ed 2d 842, 111 S Ct 779.

January 22, 1991. It is ordered that Raymond Bamidele Thompson, of Washington, D.C., be suspended from the practice of law in this

Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-967. In the Matter of Disbarment of Robert W. Costigan

498 US 1065, 112 L Ed 2d 843, 111 S Ct 779.

January 22, 1991. It is ordered that Robert W. Costigan, of Philadelphia, Pennsylvania, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-968. In the Matter of Disbarment of James Cannon, Jr.

498 US 1065, 112 L Ed 2d 843, 111 S Ct 779.

January 22, 1991. It is ordered that James Cannon, Jr., of New Castle, Alabama, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Original. State of Texas, Plaintiff v State of New Mexico

498 US 1065, 112 L Ed 2d 843, 111 S Ct 780.

January 22, 1991. The motion of the River Master for approval of fees and expenses is granted, and the River Master is awarded $4,451.32 for the period October 1 through December 31, 1990, to be paid equally by the parties.

No. 106, Original. State of Illinois, Plaintiff v Commonwealth of Kentucky

498 US 1065, 112 L Ed 2d 843, 111 S Ct 780.

January 22, 1991. The Exceptions to the Report of the Special Master are set for oral argument in due course.

No. 89-7645. Dionisio Hernandez, Petitioner v New York

498 US 1065, 112 L Ed 2d 843, 111 S Ct 780.

January 22, 1991. The motion of U.S. English, Inc., et al. for leave to file a brief as amici curiae is denied.

No. 90-368. Sheldon Baruch Toibb, Petitioner v Stuart J. Radloff

498 US 1065, 112 L Ed 2d 843, 111 S Ct 780.

January 22, 1991. James Hamilton, Esquire, of Washington, D.C., a member of the Bar of this Court, is invited to brief and argue this case, as amicus curiae in support of the judgment below.

No. 90-5319. Paul McNeil, Petitioner v Wisconsin

498 US 1065, 112 L Ed 2d 844, 111 S Ct 780.

January 22, 1991. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 90-693. Curtis Reed Johnson, Petitioner v Home State Bank

498 US 1066, 112 L Ed 2d 844, 111 S Ct 781.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit granted.

Same case below, 904 F2d 563.

No. 90-615. Rafael Peretz, Petitioner v United States

498 US 1066, 112 L Ed 2d 844, 111 S Ct 781.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted limited to the following questions:

"1. Does 28 USC § 636 [28 USCS § 636] permit a magistrate to conduct the voir dire in a felony trial if the defendant consents?

"2. If 28 USC § 636 [28 USCS § 636] permits a magistrate to conduct a felony trial voir dire provided that the defendant consents, is the statute consistent with Article III?

"3. If the magistrate's supervision of the voir dire in petitioner's trial was error, did the conduct of petitioner and his attorney constitute a waiver of the right to raise this error on appeal?"

Same case below, 904 F2d 34.

No. 90-762. Thomas Freytag, et al., Petitioners v Commissioner of Internal Revenue

498 US 1066, 112 L Ed 2d 844, 111 S Ct 781.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted. In addition to the questions presented by the petition the parties are requested to brief and argue the following question: "Does a party's consent to have its case heard by a special tax judge constitute a waiver of any right to challenge the appointment of that judge on the basis of the Appointments Clause, Art II, § 2, cl 2?"

Same case below, 904 F2d 1011.

No. 90-95. Public Utilities Commission of Ohio, et al., Petitioners v CSX Transportation, Inc., et al.

498 US 1066, 112 L Ed 2d 845, 111 S Ct 781.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 901 F2d 497.

No. 90-389. Samuel Braen, Jr., Petitioner v Nicholas Laganella, et al.

498 US 1066, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 900 F2d 621.

No. 90-507. E. Warner Bailey, et ux., Petitioners v East Texas Production Credit Assoc., et al.

498 US 1066, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 956.

No. 90-535. Juwhan Yun, Petitioner v United States

498 US 1066, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 899 F2d 1220.

No. 90-539. Carolyn Sonnenberg, et al., Petitioners v United States

498 US 1067, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 41.

No. 90-646. R. David Legg, Petitioner v W. Steve Smith, Trustee

498 US 1067, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-656. Dale Lynn Brewer, Petitioner v United States

498 US 1067, 112 L Ed 2d 845, 111 S Ct 782.

January 22, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 936.

No. 90-666. Marsha Feldman, et al., Petitioners v United States, et al.

498 US 1067, 112 L Ed 2d 846, 111 S Ct 783.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 197.

No. 90-768. Conrad Peter, Petitioner v Hess Oil Virgin Islands Corporation

498 US 1067, 112 L Ed 2d 846, 111 S Ct 783.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 903 F2d 935.

No. 90-791. Easter House, Petitioner v Thomas Felder, Florence McGuire, and Joan Satoloe

498 US 1067, 112 L Ed 2d 846, 111 S Ct 783.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 910 F2d 1387.

No. 90-793. Manuel Munoz, Jr., Petitioner v Donald B. Rice, Secretary of the Air Force

498 US 1067, 112 L Ed 2d 846, 111 S Ct 783.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1481.

No. 90-799. Charles Houston, Petitioner v United States

498 US 1067, 112 L Ed 2d 846, 111 S Ct 783.

January 22, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 32 MJ 6.

No. 90-805. Western States Petroleum Association, et al., Petitioners v Sonoma County, et al.

498 US 1067, 112 L Ed 2d 846, 111 S Ct 784.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 1287.

No. 90-812. California State Board of Equalization, Petitioner v Harold S. Taxel, Trustee in Bankruptcy

498 US 1067, 112 L Ed 2d 847, 111 S Ct 784.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 1073.

No. 90-815. Joseph A. Blaine, Petitioner v Martin Marmor, et ux.

498 US 1067, 112 L Ed 2d 847, 111 S Ct 784, reh den (US) 113 L Ed 2d 485, 111 S Ct 1434.

January 22, 1991. Petition for writ of certiorari to the District Court of Appeal of Florida, Third District, denied.

Same case below, 555 So 2d 1241.

No. 90-821. Edward Halas, Petitioner v United States

498 US 1067, 112 L Ed 2d 847, 111 S Ct 784.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 915 F2d 1583.

No. 90-822. Lawrence B. Greene, et ux., Petitioners v Barbara Balaber-Strauss, as Trustee, et al.

498 US 1067, 112 L Ed 2d 847, 111 S Ct 784.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 34.

No. 90-828. Melvin R. Kurr, Petitioner v Village of Buffalo Grove, Illinois, et al.

498 US 1067, 112 L Ed 2d 847, 111 S Ct 784.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 912 F2d 467.

No. 90-831. Jerry P. Cawley, Petitioner v Steven Muller, et al.

498 US 1068, 112 L Ed 2d 847, 111 S Ct 785.

January 22, 1991. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-835. Harriet Smith, Administratrix of the Estate of Willette Leonard Smith, Deceased, Petitioner v City of Berkeley, et al.

498 US 1068, 112 L Ed 2d 848, 111 S Ct 785, reh den (US) 113 L Ed 2d 461, 111 S Ct 1406.

January 22, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-839. County of Kern, California, Petitioner v Dan Abshire, et al.

498 US 1068, 112 L Ed 2d 848, 111 S Ct 785, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 483.

No. 90-840. David Larry Fraser, Petitioner v United States

498 US 1068, 112 L Ed 2d 848, 111 S Ct 785.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 909 F2d 1496.

No. 90-846. Mahinder S. Uberoi, Petitioner v Board of Regents of the University of Colorado, et al.

498 US 1068, 112 L Ed 2d 848, 111 S Ct 785, reh den (US) 114 L Ed 2d 130, 111 S Ct 2046.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-850. Betty M. Rogers, et al., Petitioners v Kathryn Wilcox, et al.

498 US 1068, 112 L Ed 2d 848, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the Court of Appeals of Indiana, Fourth District, denied.

No. 90-851. Charles B. Carroll, Petitioner v Insurance Company of North America

498 US 1068, 112 L Ed 2d 848, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 737.

No. 90-864. Michael Fillion, Petitioner v New York

498 US 1068, 112 L Ed 2d 848, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, First Judicial Department, denied.

Same case below, 160 App Div 2d 538, 554 NYS2d 188.

No. 90-865. Independent School District, No. I-3, Noble County, Oklahoma, et al., Petitioners v Johnny Lee Rankin

498 US 1068, 112 L Ed 2d 849, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 876 F2d 838.

No. 90-879. Ralph Rodney Fields, Petitioner v Joseph T. Durham, et al.

498 US 1068, 112 L Ed 2d 849, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 909 F2d 94.

No. 90-882. Paula Phelan, et al., Petitioners v Michael Taylor, et al.

498 US 1068, 112 L Ed 2d 849, 111 S Ct 786.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 912 F2d 429.

No. 90-883. Leonard C. Johnson, et al., Petitioners v Ricky F. Rineck, et al.

498 US 1068, 112 L Ed 2d 849, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Wisconsin denied.

Same case below, 155 Wis 2d 659, 456 NW2d 336.

No. 90-896. Jack F. Garner, Petitioner v United States

498 US 1068, 112 L Ed 2d 849, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 907 F2d 60.

No. 90-916. Giovanni Castiello, Petitioner v United States

498 US 1068, 112 L Ed 2d 849, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the First Circuit denied.

Same case below, 915 F2d 1.

No. 90-920. Henry Anderson, Petitioner v State Bar of California, et al.

498 US 1069, 112 L Ed 2d 850, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 976.

No. 90-922. Andrew D. Scholberg, et al., Petitioners v Aaron S. Lifchez, et al.

498 US 1069, 112 L Ed 2d 850, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 914 F2d 260.

No. 90-932. Gayle Schreier and Irwin Schreier, Petitioners v United States

498 US 1069, 112 L Ed 2d 850, 111 S Ct 787.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 908 F2d 645.

No. 90-945. Frederick Lawrence White, Jr., et al., Petitioners v General Motors Corporation, Inc. (two cases)

498 US 1069, 112 L Ed 2d 850, 111 S Ct 788.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same cases below, 908 F2d 669 (first case) and 908 F2d 675 (second case).

No. 90-951. Upton County, Texas, Petitioner v Mary Turner, aka Mary Turner Hind

498 US 1069, 112 L Ed 2d 850, 111 S Ct 788.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 133.

No. 90-1013. Stephen C. Stem, Petitioner v Ralph Ahearn and Chris Card

498 US 1069, 112 L Ed 2d 850, 111 S Ct 788, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ

of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 908 F2d 1.

No. 90-5728. Elizabeth Ehrlich, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 788.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 327.

No. 90-5729. Troy K. Green, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 788.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 79, 901 F2d 1131.

No. 90-5740. Daniel Joel Anton, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-5756. Nam Ping Hon, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 803.

No. 90-5758. Liwy Quinones, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 906 F2d 924.

No. 90-5766. James T. Clark, Petitioner v United States

498 US 1069, 112 L Ed 2d 851, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 696.

No. 90-5781. William C. Richardson, Petitioner v Mike Henry, et al.

498 US 1069, 112 L Ed 2d 852, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 414.

No. 90-5801. John A. Henning, Petitioner v United States

498 US 1069, 112 L Ed 2d 852, 111 S Ct 789.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 906 F2d 1392.

No. 90-5803. Manolo Perez, Petitioner v United States

498 US 1069, 112 L Ed 2d 852, 111 S Ct 790.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 1539.

No. 90-5837. Jesus Lucero-Romero, Petitioner v United States

498 US 1070, 112 L Ed 2d 852, 111 S Ct 790.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 906 F2d 977.

No. 90-5860. Stephen Paul Jones, Petitioner v Ralph Evitts, Warden

498 US 1070, 112 L Ed 2d 852, 111 S Ct 790.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 907 F2d 150.

No. 90-5900. Arnold W. Ellis, Jr., Petitioner v United States

498 US 1070, 112 L Ed 2d 852, 111 S Ct 790.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 907 F2d 12.

No. 90-5917. Stephen Newman, Petitioner v United States

498 US 1070, 112 L Ed 2d 852, 111 S Ct 790, reh den (US) 115 L Ed 2d 1110, 112 S Ct 28.

January 22, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Fifth Circuit denied.

Same case below, 906 F2d 129.

No. 90-5926. Bryan A. Blake and Melvin L. Blake, Petitioners v Dan Heard, et al.

498 US 1070, 112 L Ed 2d 853, 111 S Ct 790.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 148.

No. 90-5933. Charles Oliver, Petitioner v United States

498 US 1070, 112 L Ed 2d 853, 111 S Ct 791.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-5967. D.H., Petitioner v Vermont Department of Social and Rehabilitation Services

498 US 1070, 112 L Ed 2d 853, 111 S Ct 791.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Vermont denied.

Same case below, 154 Vt 540, 580 A2d 48.

No. 90-6001. Javier Medrano-Veloja, Petitioner v United States

498 US 1070, 112 L Ed 2d 853, 111 S Ct 791.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 912 F2d 462.

No. 90-6007. Martin R. Kucik, Petitioner v United States

498 US 1070, 112 L Ed 2d 853, 111 S Ct 791.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 909 F2d 206.

No. 90-6050. Alonzo Payne, Petitioner v John Middleton, et al.

498 US 1070, 112 L Ed 2d 853, 111 S Ct 791, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 148.

No. 90-6061. Rito Andres Villa, Petitioner v United States

498 US 1070, 112 L Ed 2d 854, 111 S Ct 791.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 42.

No. 90-6083. Kenneth A. Greene, Petitioner v Louis W. Sullivan, Secretary of Health and Human Services, et al.

498 US 1070, 112 L Ed 2d 854, 111 S Ct 792.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1476.

No. 90-6118. John F. Desmond, Petitioner v Department of Defense

498 US 1070, 112 L Ed 2d 854, 111 S Ct 792, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 915 F2d 1584.

No. 90-6169. Robert Benson Woods, Jr., Petitioner v United States

498 US 1070, 112 L Ed 2d 854, 111 S Ct 792.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 1540.

No. 90-6201. Linwood Gray, Petitioner v United States

498 US 1070, 112 L Ed 2d 854, 111 S Ct 792.

January 22, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-6276. William B. Ward, Petitioner v United States

498 US 1070, 112 L Ed 2d 854, 111 S Ct 792.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 734.

No. 90-6287. Alan D. Dickinson, Petitioner v Community Bank, et al.

498 US 1071, 112 L Ed 2d 854, 111 S Ct 792.

January 22, 1991. Petition for writ

of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-6289. Paris Armstrong, Jr., Petitioner v Anthony Frank, Postmaster General

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1577.

No. 90-6296. Darryl Satterwhite, Petitioner v United States

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793.

January 22, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-6301. Robert Shaw, Petitioner v Howard Peters, Warden

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793, reh den (US) 113 L Ed 2d 485, 111 S Ct 1433.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-6302. Carl Sandlin, Petitioner v Charles Ellis

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6304. Stanley Rickabaugh, Petitioner v United States

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6313. Edward A. Ganey, Jr., Petitioner v Samuel A. Wilson, III, et al.

498 US 1071, 112 L Ed 2d 855, 111 S Ct 793, reh den 498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1491.

No. 90-6314. Daries Sherrills, Petitioner v Wayne L. Kerek, et al.

498 US 1071, 112 L Ed 2d 855, 111 S Ct 794.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1573.

No. 90-6320. Rey David Vargas, Petitioner v Ron Mull, et al.

498 US 1071, 112 L Ed 2d 856, 111 S Ct 794.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 398 SE2d 23.

No. 90-6322. Brad C. Sparks, Petitioner v Arlo Smith, et al.

498 US 1071, 112 L Ed 2d 856, 111 S Ct 794.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of California denied.

No. 90-6323. Carlos Diaz, Petitioner v Ronald Miles, Superintendent, Elmira Correctional Facility, et al.

498 US 1071, 112 L Ed 2d 856, 111 S Ct 794, reh den (US) 113 L Ed 2d 272, 111 S Ct 1342.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6326. Donald Gene Henthorn, Petitioner v United States District Court for the District of Columbia

498 US 1071, 112 L Ed 2d 856, 111 S Ct 794, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-6336. Scott W. Veale and David T. Veale, Petitioners v New Hampshire

498 US 1071, 112 L Ed 2d 856, 111 S Ct 794, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

No. 90-6339. Peter D. Johnson, Petitioner v Michael P. Lane, et al.

498 US 1071, 112 L Ed 2d 856, 111 S Ct 795.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-6344. William C. Dodson, Petitioner v Pennsylvania, et al.

498 US 1071, 112 L Ed 2d 856, 111 S Ct 795.

January 22, 1991. Petition for writ of certiorari to the United States

Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 242.

No. 90-6347. Edward D. Massey, Petitioner v Grand Union Company, dba Big Star Food Stores, et al.

498 US 1072, 112 L Ed 2d 857, 111 S Ct 795.

January 22, 1991. Petition for writ of certiorari to the Superior Court of Georgia, Fulton County, denied.

No. 90-6353. Jeannie Barrientos, Petitioner v Reliance Standard Life Insurance Company and David R. Barrientos

498 US 1072, 112 L Ed 2d 857, 111 S Ct 795.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 1115.

No. 90-6357. Carl R. Sandlin, Petitioner v Pat Allen, et al.

498 US 1072, 112 L Ed 2d 857, 111 S Ct 795, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1578.

No. 90-6364. Lawrence J.D. Mort, Petitioner v Ohio Board of Commissioners on Character and Fitness

498 US 1072, 112 L Ed 2d 857, 111 S Ct 795.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 53 Ohio St 3d 260, 560 NE2d 204.

No. 90-6368. Frederick L. Danielson, Petitioner v Illinois

498 US 1072, 112 L Ed 2d 857, 111 S Ct 796.

January 22, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, Second District, denied.

Same case below, 195 Ill App 3d 1110, 164 Ill Dec 119, 582 NE2d 327.

No. 90-6373. Joyce E. Richards and James L. Martin, Petitioners v Medical Center of Delaware, Inc., et al.

498 US 1072, 112 L Ed 2d 857, 111 S Ct 796, reh den (US) 113 L Ed 2d 233, 111 S Ct 1125.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6374. Allan D. Buyna, Petitioner v Robert Casey, et al.

498 US 1072, 112 L Ed 2d 858, 111 S Ct 796.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6377. Joseph Arthur Carbray, Petitioner v Ron Champion, Warden, et al.

498 US 1072, 112 L Ed 2d 858, 111 S Ct 796.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 905 F2d 314.

No. 90-6379. Davis Memphis Carter, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1072, 112 L Ed 2d 858, 111 S Ct 796.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 254.

No. 90-6380. Donny Joel Harvey, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1072, 112 L Ed 2d 858, 111 S Ct 796.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 918 F2d 175.

No. 90-6381. Phillip N. Monroe, Petitioner v Samuel Skinner, Secretary of Transportation

498 US 1072, 112 L Ed 2d 858, 111 S Ct 797.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1468.

No. 90-6385. Abijah Abiff, Petitioner v Georgia

498 US 1072, 112 L Ed 2d 858, 111 S Ct 797, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Georgia denied.

Same case below, 260 Ga 434, 396 SE2d 483.

No. 90-6386. Rodney O. Bailey, Petitioner v Colorado

498 US 1073, 112 L Ed 2d 858, 111 S Ct 797.

January 22, 1991. Petition for writ

of certiorari to the Court of Appeals of Colorado denied.

No. 90-6389. Gary Lee Harris, Petitioner v Edward Murray, et al.

498 US 1073, 112 L Ed 2d 859, 111 S Ct 797.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 916 F2d 710.

No. 90-6390. William L. Hayes, Petitioner v Bruce Genovese, et al.

498 US 1073, 112 L Ed 2d 859, 111 S Ct 797.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6395. Huey Wright, Petitioner v New York

498 US 1073, 112 L Ed 2d 859, 111 S Ct 798, reh den (US) 113 L Ed 2d 233, 111 S Ct 1125.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6414. Anthony Pierce Mattox, Petitioner v Florida

498 US 1073, 112 L Ed 2d 859, 111 S Ct 798.

January 22, 1991. Petition for writ of certiorari to the District Court of Appeal of Florida, First District, denied.

Same case below, 563 So 2d 793.

No. 90-6420. Donald E. Hunziker and Joan E. Hunziker, Petitioners v German-American State Bank, et al.

498 US 1073, 112 L Ed 2d 859, 111 S Ct 798, reh den (US) 113 L Ed 2d 485, 111 S Ct 1433.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-6426. George King, Jr., Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary

498 US 1073, 112 L Ed 2d 859, 111 S Ct 798.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-6552. Joseph Moniz, Petitioner v Clyde Storie

498 US 1073, 112 L Ed 2d 860, 111 S Ct 798.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 509.

No. 90-515. Lockheed Shipbuilding Company, Petitioner v Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

498 US 1073, 112 L Ed 2d 860, 111 S Ct 798.

January 22, 1991. The motion of respondent Wilborn Stevens for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1256.

No. 90-575 (A-451). Tiger Inn, Petitioner v Sally Frank, et al.

498 US 1073, 112 L Ed 2d 860, 111 S Ct 799.

January 22, 1991. The application for stay of mandate, presented to Justice Souter, and by him referred to the Court, is denied. Petition for writ of certiorari to the Supreme Court of New Jersey denied.

Same case below, 120 NJ 73, 576 A2d 241.

No. 90-631. American Special Risk Insurance Company, et al., Petitioners v Rohm & Haas Company, et al.

498 US 1073, 112 L Ed 2d 860, 111 S Ct 799.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice White would grant certiorari.

Same case below, 905 F2d 1424.

No. 90-647. C. L. Grimes, Petitioner v Centerior Energy Corporation

498 US 1073, 112 L Ed 2d 860, 111 S Ct 799.

January 22, 1991. The motion of United Shareholders Association for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 285 App DC 290, 909 F2d 529.

No. 90-720. Alfredo DeVargas, Petitioner v Mason & Hanger-Silas Mason Co., Inc., et al.

498 US 1074, 112 L Ed 2d 860, 111 S Ct 799.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice White and Justice Marshall would grant certiorari.

Same case below, 911 F2d 1377.

No. 90-5836. Albert Ronnie Burrell, Petitioner v Louisiana

498 US 1074, 112 L Ed 2d 861, 111 S Ct 799.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Louisiana denied.

Same case below, 561 So 2d 692.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-5851. Louis Joe Truesdale, Petitioner v South Carolina

498 US 1074, 112 L Ed 2d 861, 111 S Ct 800, reh den (US) 113 L Ed 2d 272, 111 S Ct 1341.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of South Carolina denied.

Same case below, 301 SC 546, 393 SE2d 168.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6072. Frank J. Guinan, Petitioner v William Armontrout, Warden

498 US 1074, 112 L Ed 2d 861, 111 S Ct 800.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eight Circuit denied.

Same case below, 909 F2d 1224.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6318. Michael Joe Boyd, Petitioner v Tennessee

498 US 1074, 112 L Ed 2d 861, 111 S Ct 800.

January 22, 1991. Petition for writ of certiorari to the Supreme Court of Tennessee, Western Division, denied.

Same case below, 797 SW2d 589.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6227. Carlos Benitez Guzman, Petitioner v United States

498 US 1074, 112 L Ed 2d 862, 111 S Ct 801.

January 22, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied. Justice Souter took no part in the consideration or decision of this petition.

Same case below, 911 F2d 847.

No. 90-6265. Gerald Vontsteen, Petitioner v United States

498 US 1074, 112 L Ed 2d 862, 111 S Ct 801.

January 22, 1991. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 910 F2d 187.

No. 90-6608. In Re James W. Bright, Petitioner

498 US 1065, 112 L Ed 2d 862, 111 S Ct 801, reh den 498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

January 22, 1991. The petition for writ of habeas corpus is denied.

No. 90-6421. In Re Donald E. Hunziker and Joan E. Hunziker, Petitioners

498 US 1065, 112 L Ed 2d 862, 111 S Ct 801, reh den (US) 113 L Ed 2d 485, 111 S Ct 1433.

January 22, 1991. The petition for writ of mandamus is denied.

No. 90-6354. In Re John E. Mulville, Petitioner

498 US 1065, 112 L Ed 2d 862, 111 S Ct 801, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. The petition for writ of mandamus and/or prohibition is denied.

No. 90-6355. In Re John E. Mulville, Petitioner

498 US 1066, 112 L Ed 2d 862, 111 S Ct 801, reh den (US) 113 L Ed 2d 273, 111 S Ct 1342.

January 22, 1991. The petition for writ of mandamus and/or prohibition is denied.

No. 90-6393. In Re Douglas Rubins, Petitioner

498 US 1066, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for writ of prohibition is denied.

No. 90-354. Sarah Elizabeth Frey, et al., Petitioners v William K. Reilly, Administrator, Environmental Protection Agency

498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 981, 112 L Ed 2d 521, 111 S Ct 509.

No. 90-521. Emanuel M. Comora, et ux., Petitioners v Irvin Radell, et al.

498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 981, 112 L Ed 2d 523, 111 S Ct 511.

No. 90-541. Lonnie B. Rupert, Petitioner v Macon W. Gravlee, Jr., et al.

498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 982, 112 L Ed 2d 524, 111 S Ct 512.

No. 90-613. Black Crystal Company, Inc., Petitioner v First National Bank of Louisville

498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 999, 112 L Ed 2d 564, 111 S Ct 557.

No. 90-651. Michael E. Plunkett, et al., Petitioners v Federal Deposit Insurance Corporation, Receiver of First Interstate Bank of Alaska, et al.

498 US 1074, 112 L Ed 2d 863, 111 S Ct 802.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 985, 112 L Ed 2d 530, 111 S Ct 518.

No. 90-665. Benefit Trust Life Insurance Company, Petitioner v Daniel Kunin

498 US 1074, 112 L Ed 2d 863, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1013, 112 L Ed 2d 587, 111 S Ct 581.

No. 90-671. Edward D. Christensen, Petitioner v Brent D. Ward, et al.

498 US 1075, 112 L Ed 2d 863, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 999, 112 L Ed 2d 565, 111 S Ct 559.

No. 90-5100. Glenn Ford, Petitioner v Louisiana

498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 992, 112 L Ed 2d 547, 111 S Ct 537.

No. 90-5544. Peter R. Johl, Petitioner v Ellen A. Peters, et al.

498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 986, 112 L Ed 2d 533, 111 S Ct 522.

No. 90-5691. Vernon Brown, Petitioner v Lane McCotter, Secretary, Department of Corrections of New Mexico, et al.

498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1000, 112 L Ed 2d 567, 111 S Ct 561.

No. 90-5755. Raymond H. Hertel, et al., Petitioners v Federal Land Bank of St. Louis

498 US 1075, 112 L Ed 2d 864, 111 S Ct 803.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 987, 112 L Ed 2d 534, 111 S Ct 523.

No. 90-5848. Albert Claude Parker, Petitioner v J. W. Fairman, Warden, et al.

498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 987, 112 L Ed 2d 536, 111 S Ct 525.

No. 90-5855. Mary Juanita Sellers, Petitioner v Delgado College, et al.

498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 987, 112 L Ed 2d 536, 111 S Ct 525.

No. 90-6037. Maurice S. McGee, Petitioner v Randall Division of Textron, Inc., of Grenada, Mississippi

498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1015, 112 L Ed 2d 592, 111 S Ct 587.

No. 90-6085. In Re Charles C. Douglass, Petitioner

498 US 1075, 112 L Ed 2d 864, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied.

Former Decision, 498 US 979, 112 L Ed 2d 549, 111 S Ct 539.

No. 89-1283. Arcadia, Ohio, et al., Petitioners v Ohio Power Company, et al.

498 US 1075, 112 L Ed 2d 865, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 73, 112 L Ed 2d 374, 111 S Ct 415.

No. 89-5120. Michael Owen Perry, Petitioner v Louisiana

498 US 1075, 112 L Ed 2d 865, 111 S Ct 804.

January 22, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 38, 112 L Ed 2d 338, 111 S Ct 449.

No. 89-5867. Shirley W. Irwin, Petitioner v Department of Veterans Affairs, et al.

498 US 1075, 112 L Ed 2d 865, 111 S Ct 805.

January 22, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 89, 112 L Ed 2d 435, 111 S Ct 453.

No. 89-7584. Wilbur E. Cook, Petitioner v United States

498 US 1075, 112 L Ed 2d 865, 111 S Ct 805.

January 22, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 832, 112 L Ed 2d 67, 111 S Ct 95.

No. 89-7822. Annie Green, et al., Petitioners v Law Firm of Wiseman, Blackburn, Futrell and Cohen, et al.

498 US 1075, 112 L Ed 2d 865, 111 S Ct 805.

January 22, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 842, 112 L Ed 2d 89, 111 S Ct 120.

No. 90-257. National Coal Association, Petitioner v Natural Resources Defense Council, Inc., et al.

No. 90-558. Alabama Power Company, et al., Petitioners v Natural Resources Defense Council, Inc., et al.

498 US 1075, 112 L Ed 2d 865, 111 S Ct 806.

January 24, 1991. The petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit in the above-entitled cases were dismissed today pursuant to Rule 46 of this Court.

Same cases below, 284 App DC 136, 902 F2d 962.

[498 US 337]

McDERMOTT INTERNATIONAL, INC., Petitioner

v

JON C. WILANDER

498 US 337, 112 L Ed 2d 866, 111 S Ct 807

[No. 89-1474]

Argued December 3, 1990. Decided February 19, 1991.

Decision: Employee's status as "seaman" under Jones Act (46 USCS Appx § 688) held not to require that employee aid in navigation of vessel.

SUMMARY

A paint foreman, whose employment duties included the sandblasting and painting of piping located on oil drilling platforms in the Persian Gulf, was injured while inspecting a pipe on one such platform. At the time of the accident, the foreman was assigned to an American-flag vessel chartered to his employer, which vessel operated as a "paint boat" and contained sandblasting and painting equipment. The foreman, who sued his employer in the United States District Court for the Western District of Louisiana, sought recovery under the Jones Act (46 USCS Appx § 688)—which provides a cause of action in negligence for any "seaman" injured in the course of employment—for the employer's negligence related to the accident. In a bifurcated trial, the jury first determined that the foreman had seaman status, based on the jury's findings that (1) the foreman either was permanently assigned to the paint boat or performed a substantial amount of work aboard it, and (2) the performance of the foreman's duties contributed to the function of the paint boat or to the accomplishment of its mission. Subsequently, in the liability phase of the trial, the jury awarded damages to the foreman on his Jones Act negligence claim. On appeal, the United States Court of Appeals for the Fifth Circuit, affirming the District Court's determination of the foreman's seaman status, (1) expressed the view that the foreman was a Jones Act "seaman" because he met the requirement established by earlier Fifth Circuit precedent of "contribut[ing] to the function of the vessel or to the accomplishment of its mission," and (2) rejected an alternative requirement imposed in another federal Circuit, under which requirement seaman status was to be conferred on only

SUBJECT OF ANNOTATION

Beginning on page 1254, infra

Supreme Court's views as to who is "seaman" under Jones Act (46 USCS Appx § 688, and similar predecessor provisions)

Briefs of Counsel, p 1253, infra.

employees who performed significant navigational functions or furthered the transportation function of the vessel (887 F2d 88).

On certiorari, the United States Supreme Court affirmed. In an opinion by O'Connor, J., expressing the unanimous view of the court, it was held that (1) a person need not aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act, because (a) at the time of passage of the Jones Act in 1920, the general maritime law did not require that a seaman aid in navigation, (b) the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950)—which was enacted in 1927, and which in 33 USCS § 902(3)(G) excludes from its provision of recovery for injury to a broad range of land-based maritime workers coverage of "a master or member of a crew of any vessel"—did not change the rule that a seaman need not aid in navigation, and (c) there was no indication in the Jones Act, the LHWCA, or elsewhere that Congress had excluded from Jones Act remedies those traditional seamen who owed allegiance to a vessel at sea, but did not aid in navigation; and (2) the better rule was to define "master or member of a crew" under the LHWCA, and therefore "seaman" under the Jones Act, solely in terms of the employee's connection to a vessel in navigation, and although it was not necessary that an employee aid in navigation or contribute to the transportation of the vessel in order to qualify for seaman status, it was required that the employee perform the work of a vessel, that is, that the employee's duties contribute to the function of the vessel or to the accomplishment of its mission.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 45-47, 111, 119

11 Federal Procedure, L Ed, Employers' Liability Acts § 30:87

9 Federal Procedural Forms, L Ed, Employers' Liability Acts § 27:111

11 Am Jur Pl & Pr Forms (Rev), Federal Employers' Liability and Compensation Acts, Form 151

9 Am Jur Trials 665, Seaman's Injuries

33 USCS § 902(3)(G); 46 USCS Appx § 688

L Ed Digest, Federal Employers' Liability and Compensation Acts §§ 58, 74

L Ed Index, Jones Act; Longshoremen's and Harbor Workers' Compensation Act; Seamen

Index to Annotations, Jones Act; Longshoremen and Stevedores; Seamen

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views on weight to be accorded to pronouncements of legislature, or members of legislature, respecting meaning or intent of previously enacted statute. 56 L Ed 2d 918.

Seaman as injured "in the course of his employment" for purposes of the Jones Act—federal cases. 4 L Ed 2d 1777.

Applicability of Jones Act (46 USCS Appx § 688) to workers connected with operation of dredges, drilling platforms, derricks, or similar special-purpose equipment. 92 ALR Fed 733.

Who is "a master or member of a crew of any vessel" within exclusion of Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 902(3) and 903(a)(1)). 20 ALR Fed 600.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Federal Employers' Liability and Compensation Acts §§ 58, 74; Shipping § 131; Statutes §§ 154, 180 — "seaman" under Jones Act — "master or member of a crew" under Longshore and Harbor Workers' Compensation Act — general maritime law

1a-1e. A person need not aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act (46 USCS Appx § 688), because (1) at the time of passage of the Jones Act in 1920, the general maritime law did not require that a seaman aid in navigation, it being necessary only that a person be employed on board a vessel in furtherance of its purpose, (2) the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950)—which was enacted in 1927, and which in 33 USCS § 902(3)(G) excludes from its provision of recovery for injury to a broad range of land-based maritime workers coverage of "a master or member of a crew of any vessel"—does not change the rule that a seaman need not aid in navigation, but rather the § 902(3)(G) exclusion refines the term "seaman" as used in the Jones Act and restates that a Jones Act "seaman" is supposed to be a sea-based maritime employee, and (3) there is no indication in the Jones Act, the LHWCA, or elsewhere that Congress has excluded from Jones Act remedies those traditional seamen who owe allegiance to a vessel at sea, but do not aid in navigation; the better rule is to define "master or member of a crew" under the LHWCA, and therefore "seaman" under the Jones Act, solely in terms of the employee's connection to a vessel in navigation; although it is not necessary that an employee aid in navigation or contribute to the transportation of the vessel in order to qualify for seaman status, it is required that an employee perform the work of a vessel, that is, that the employee's duties contribute to the function of the vessel or to the accomplishment of its mission.

[See annotation p 1254, infra]

Statutes § 166 — established meaning of "seaman"

2. In the absence of contrary indication, the United States Supreme Court will assume that Congress, in enacting the Jones Act (46 USCS Appx § 688), intended that the term "seaman"—which is a maritime term of art—have its established meaning.

[See annotation p 1254, infra]

Federal Employers' Liability and Compensation Acts §§ 58, 74 — remedy under Longshore and Harbor Workers' Compensation Act — distinction from Jones Act

3a, 3b. As a result of the passage of the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950)—which in 33 USCS § 902(3)(G) excludes from its provision of recovery for injury to a broad range of land-based maritime workers coverage of "a master or member of a crew of any vessel"—a clear distinction is established by Congress between land-based maritime workers and sea-based maritime workers; the LHWCA, which restricts the definition of the term "seaman" in the Jones Act (46 USCS Appx § 688) to only the extent that such term had been taken to include land-based employees, is one of a pair of mutually exclusive remedial statutes that distinguish between land-based and sea-based maritime employees.

[See annotation p 1254, infra]

Federal Employers' Liability and Compensation Acts § 58; Shipping § 131 — "seamen" under Jones Act or general maritime law

4. Sea-based maritime workers, who owe their allegiance to a vessel and not solely to a land-based employer, are seamen; under either the Jones Act (46 USCS Appx § 688) or general maritime law, seamen do not include land-based workers.

[See annotation p 1254, infra]

Summary Judgment and Judgment on Pleadings § 5; Trial §§ 42, 72, 196 — "master or member of a crew" under Longshore and Harbor Workers' Compensation Act — "seaman" under Jones Act — mixed question of law and fact — summary judgment — directed verdict

5. The question of who is a "member of a crew" under the Longshore and Harbor Workers' Compensation Act (33 USCS §§ 901-950)—and therefore who is a "seaman" under the Jones Act (46 USCS Appx § 688)—is better characterized as a mixed question of law and fact than as a question of fact; in answering mixed questions of law and fact, where the underlying facts are established and the rule of law is undisputed, the issue is whether the facts meet the statutory standard; it is for the court to define the statutory standard, and the interpretation of the statutory terms "member of a crew" and "seaman" is a question of law; while it is for the jury to find the facts and to apply the legal standard in determining an employee's seaman status, the court must not abdicate its duty to determine if there is a reasonable basis to support the jury's conclusion, and summary judgment or a directed verdict is mandated where the established facts and the law will reasonably support only one conclusion; since the inquiry into seaman status is of necessity fact-specific, and dependent upon the nature of the vessel and the employee's precise relation to it, it is a question for the jury if reasonable persons, applying the proper legal standard, could differ as to whether the employee was a "member of a crew."

SYLLABUS BY REPORTER OF DECISIONS

Respondent Wilander, a paint foreman injured at work while assigned to a "paint boat" chartered by petitioner McDermott International, sued McDermott under the Jones Act. The Act provides a cause of action in negligence for "any seaman" injured "in the course of his employment," but does not define "seaman." McDermott moved for summary judgment, alleging that, as a matter of law, Wilander was not a "seaman." The District Court denied the motion, and the jury entered an award for Wilander, finding, inter alia, that the performance of his duties contributed to his vessel's function or to the accomplishment of its mission and therefore satisfied the Fifth Circuit's test for seaman status. The Fifth Circuit affirmed, refusing to abandon its test in favor of the Seventh Circuit's more stringent standard, which, in effect, requires that a "seaman" aid in the navigation of the vessel.

Held: One need not aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act.

(a) In the absence of contrary indication, it may be assumed that the Jones Act's failure to define "seaman" indicates a congressional intent that the word have its established meaning under general maritime law at the time of the Act's passage.

(b) At the time of its passage in 1920, the Jones Act established no requirement that a seaman aid in navigation. Although certain early cases had imposed such a requirement, a review of later cases demonstrates that, by 1920, general maritime law had abandoned that requirement in favor of a rule requiring only that a seaman be employed on board a vessel in furtherance of its purpose.

(c) The Longshore and Harbor Workers' Compensation Act (LHWCA)—which was enacted in 1927 and provides recovery for injury to a broad range of land-based maritime workers, but explicitly excludes from its coverage "a master or member of a crew of any vessel" —does not change the rule that a seaman need not aid in navigation. That Act and the Jones Act are mutually exclusive, such that a "seaman" under the Jones Act is the same as a "master or member of a crew of any vessel." Swanson v Marra Brothers, Inc., 328 US 1, 7, 90 L Ed 1045, 66 S Ct 869. Although the LHWCA exception thus refines the Jones Act term "seaman," restricting it to sea-based maritime employees, it does not indicate that members of a crew are required to navigate.

(d) The conflict addressed here has as its source this Court's inconsistent use of an aid in navigation requirement in LHWCA and Jones Act cases. That requirement slipped into the Court's case law in South Chicago Coal & Dock Co. v Bassett, 309 US 251, 260, 84 L Ed 732, 60 S Ct 544, an LHWCA case decided before the Court recognized in Swanson, supra, that the two Acts are mutually exclusive. Although the Court subsequently ruled in another pre-Swanson LHWCA case, Norton v Warner Co., 321 US 565, 88 L Ed 931, 64 S Ct 747, that the Bassett aid in navigation test was not to be read restrictively and that navigation under the test embraces duties of a "member of a crew" that are essential to the operation and welfare of his vessel, a series of post-Swanson Jones Act cases either asserted an aid in navigation requirement or relied on Bassett even though they afforded seaman status to claimants working on board vessels whose jobs had no connection to navigation, see, e.g., Butler v Whiteman, 356 US 271, 2 L Ed 2d 754, 78 S Ct 735. Such cases have engendered confusion and have led the lower courts to a myriad of standards and lack of uniformity in administering the elements of seaman status.

(e) The time has come to jettison the aid in navigation language. The better rule—the rule that best explains the Court's case law and is consistent with the pre-Jones Act interpretation of "seaman" and Congress' land-based/sea-based distinction in the two Acts—is to define "master or member of a crew" under the LHWCA, and therefore "seaman" under the Jones Act, not in terms of the employee's particular job, but solely in terms of the employee's connection to a vessel in navigation. A necessary element of the connection is that a seaman perform the work of a vessel, i.e., that the employee's duties contribute to the function of the vessel or to the accomplishment of its mission.

(f) The question of who is a "seaman" under the Jones Act is better characterized as a mixed question of law and fact than as a pure question of fact for the jury. It is for the court to define the proper legal standard and for the jury to find the facts and apply that standard. The narrow question presented here—whether Wilander should be precluded from seaman status because he did not perform transportation-related functions on board the vessel-is a question of law that must be answered in the negative.

887 F2d 88, affirmed.

O'Connor, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

James B. Doyle argued the cause for petitioner.

Jennifer J. Bercier argued the cause for respondent.

Briefs of Counsel, p 1253, infra.

OPINION OF THE COURT

[498 US 339]

Justice **O'Connor** delivered the opinion of the Court.

[1a] The question in this case is whether one must aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act, 46 USC App § 688 [46 USCS Appx § 688].

I

Jon Wilander worked for McDermott International, Inc., as a paint foreman. His duties consisted primarily of supervising the sandblasting and painting of various fixtures and piping located on oil drilling platforms in the Persian Gulf. On July 4, 1983, Wilander was inspecting a pipe on one such platform when a bolt serving as a plug in the pipe blew out under pressure, striking Wilander in the head. At the time, Wilander was assigned to the American-flag vessel M/V Gates Tide, a "paint boat" chartered to McDermott that contained equipment used in sandblasting and painting the platforms.

Wilander sued McDermott in the United States District Court for the Western District of Louisiana, seeking recovery under the Jones Act for McDermott's negligence related to the accident. McDermott moved for summary judgment, alleging that, as a matter of law, Wilander was not a "seaman" under the Jones Act, and therefore not entitled to recovery. The District Court denied the motion. App 19. In a bifurcated trial, the jury first determined Wilander's status as a seaman. By special interrogatory, the jury found that Wilander was either permanently assigned to, or performed a substantial amount of work aboard, the Gates Tide, and that the performance of his duties contributed to the

[498 US 340]

function of the Gates Tide or to the accomplishment of its mission, thereby satisfying the test for seaman status established in Offshore Co. v Robison, 266 F2d 769 (CA5 1959). App to Pet for Cert 16-17. The District Court denied McDermott's motion for judgment based on the jury findings. Id., at 10-16.

The case then proceeded to trial on the issues of liability and damages. The jury found that McDermott's negligence was the primary cause of Wilander's injuries, but that Wilander had been 25% contributorily negligent. The jury awarded Wilander $337,500. The District Court denied McDermott's motion for judgment notwithstanding the verdict, id., at 19-21, and both parties appealed.

The United States Court of Appeals for the Fifth Circuit affirmed the determination of seaman status, finding sufficient evidence to support the jury's finding under the Robison test. 887 F2d 88, 90 (1989). McDermott asked the court to reject the Robison requirement that a seaman "contribut[e] to the function of the vessel, or to the accomplishment of its mission," Robison, supra, at 779, in favor of the more stringent requirement of Johnson v John F. Beasley Construction Co. 742 F2d 1054 (CA7 1984). In that case, the Court of Appeals for the Seventh Circuit—relying on cases from this Court requiring that a seaman aid in the navigation of a vessel—held that seaman status under the Jones Act may be conferred only on employees who make "a significant contribution to the maintenance, operation, or welfare of the *transportation* function of the vessel." Id., at 1063 (emphasis added).

The Fifth Circuit here concluded that Wilander would not meet the requirements of the Johnson test, but reaffirmed the rule in Robison and held that Wilander was a "seaman" under the Jones Act. 887 F2d, at 90-91. We granted certiorari, 496 US 935, 110 L Ed 2d 660, 110 S Ct 3212 (1990), to resolve the conflict between the Robison and Johnson tests on the issue of the transportation/navigation function requirement, and now affirm.

II

A

In 1903, in The Osceola, 189 US 158, 47 L Ed 760, 23 S Ct 483, this Court summarized the state of seamen's remedies under general maritime law. Writing for the Court, Justice Brown reviewed the leading English and American authorities and declared the law settled on several propositions:

> "1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.
>
> "2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship . . . .
>
> "3. That all the members of the crew . . . are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.
>
> "4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew . . . ." Id., at 175, 47 L Ed 760, 23 S Ct 483.

The Osceola affirmed a seaman's general maritime right to maintenance and cure, wages, and to recover for unseaworthiness, but excluded seamen from the general maritime negligence remedy.

Congress twice attempted to overrule The Osceola and create a negligence action for seamen. The Seamen's Act of 1915, 38 Stat 1164, dealt with proposition 3 of The Osceola, the fellow servant doctrine. Section 20 of the 1915 Act provided: "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority." 38 Stat 1185. The change was ineffective.

Petitioner in Chelentis v Luckenbach S. S. Co., 247 US 372, 62 L Ed 1171, 38 S Ct 501 (1918), a fireman on board the steamship J.L. Luckenbach, attempted to recover from the ship's owner for injuries resulting from the alleged negligence of a superior officer. The Court explained that the 1915 Act was "irrelevant." Id., at 384, 62 L Ed 1171, 38 S Ct 501. The Act successfully established that the superior officer was not Chelentis' fellow servant, but Congress had overlooked The Osceola's fourth proposition. The superior officer was no longer a fellow servant, but he was still a member of the crew. Under proposition 4, there was no recovery for negligence. 247 US, at 384, 62 L Ed 1171, 38 S Ct 501.

Congress tried a different tack in 1920. It passed the Jones Act, which provides a cause of action in negligence for "any seaman" injured "in the course of his employment." 46 USC App § 688 [46 USCS Appx § 688]. The Act thereby removes the bar to negligence articulated in The Osceola.

[2] The Jones Act does not define "seaman." Neither does The Osceola; it simply uses the term as had other admiralty courts. We assume that the Jones Act uses "seaman" in the same way. For one thing, the Jones Act provides what The Osceola precludes. "The only purpose of the Jones Act was to remove the bar created by The Osceola, so that seamen would have the same rights to recover for negligence as other tort victims." G. Gilmore & C. Black, Law of Admiralty 328-329 (2d ed 1975). See also Warner v Goltra, 293 US 155, 159, 79 L Ed 254, 55 S Ct 46 (1934). The Jones Act, responding directly to The Osceola, adopts without further elaboration the term used in The Osceola. Moreover, "seaman" is a maritime term of art. In the absence of contrary indication, we assume that when a statute uses such a term, Congress intended it to have its established meaning. See Morissette v United States, 342 US 246, 263, 96 L Ed 288, 72 S Ct 240 (1952); Gilbert v United States, 370 US 650, 658, 8 L Ed 2d 750, 82 S Ct 1399 (1962). Our first task, therefore, is to determine who was a seaman under the general maritime law when Congress passed the Jones Act.

B

Since the first Judiciary Act, federal courts have determined who is eligible for various seamen's benefits under general maritime law. Prior to the Jones Act, these benefits included the tort remedies outlined in The Osceola and a lien against the ship for wages. See generally Gilmore & Black, supra, at 35-36, 281; The John G. Stevens, 170 US 113, 119, 42 L Ed 969, 18 S Ct 544 (1898); The Osceola, supra, at 175, 47 L Ed 760, 23 S Ct 483. Certain early cases limited seaman status to those who aided in the navigation of the ship. The narrow rule was that a seaman —sometimes referred to as a mariner—must actually navigate: "[T]he persons engaged on board of her must have been possessed of some skill in navigation. They must have been able to 'hand, reef and steer,' the ordinary test of seamanship." The Canton, 5 F Cas 29, 30 (No. 2,388) (D Mass 1858). See also Gurney v Crockett, 11 F Cas 123, 124 (No. 5,874) (SDNY 1849).

Notwithstanding the aid in navigation doctrine, federal courts throughout the last century consistently awarded seamen's benefits to those whose work on board ship did not direct the vessel. Firemen, engineers, carpenters, and cooks all were considered seamen. See, e.g., Wilson v The Ohio, 30 F Cas 149 (No. 17,825) (ED Pa 1834) (firemen); Allen v Hallet, 1 F Cas 472 (No. 223) (SDNY 1849) (cook); Sageman v The Brandywine, 21 F Cas 149 (No. 12,216) (D Mich 1852) (female cook); The Sultana, 23 F Cas 379 (No. 13,602) (D Mich 1857) (clerk). See generally M. Norris, Law of Seamen § 2.3 (4th ed 1985); Engerrand & Bale, Seaman Status Reconsidered, 24 S Tex L J 431, 432-433 (1983).

Some courts attempted to classify these seamen under a broad conception of aid in navigation that included those who aided in navigation indirectly by supporting those responsible for moving the vessel: "[T]he services rendered must be necessary, or, at least, contribute to the preservation of the vessel, or of those whose labour and skill are employed to navigate

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her." Trainer v The Superior, 24 F Cas 130, 131 (No. 14,136) (ED Pa 1834). This fiction worked for cooks and carpenters—who fed those who navigated and kept the ship in repair—but what of a cooper whose job it was to make barrels to aid in whaling? As early as 1832, Justice Story, sitting on circuit, held that "[a] 'cooper' is a seaman in contemplation of law, although he has peculiar duties on board of the ship." United States v Thompson, 28 F Cas 102 (No. 16,492) (CCD Mass). Justice Story made no reference to navigation in declaring it established that: "A cook and steward are seamen in the sense of the maritime law, although they have peculiar duties assigned them. So a pilot, a surgeon, a ship-carpenter, and a boatswain, are deemed seamen, entitled to sue in the admiralty." Ibid.

By the middle of the 19th century, the leading admiralty treatise noted the wide variety of those eligible for seamen's benefits: "Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, kitchen boys, engineers, pilots, firemen, deck hands, waiters,—women as well as men,—are mariners." E. Benedict, American Admiralty § 278, p 158 (1850). Benedict concluded that American admiralty courts did not require that seamen have a connection to navigation. "The term mariner includes all persons employed on board ships and vessels during the voyage to assist in their navigation and preservation, *or to promote the purposes of the voyage.*" Ibid. (emphasis added). Moreover, Benedict explained, this was the better rule; admiralty courts throughout the world had long recognized that seamen's benefits were properly extended to all those who worked on board vessels in furtherance of the myriad purposes for which ships set to sea:

> "It is universally conceded that the general principles of law must be applied to new kinds of property, as they spring into existence in the progress of society, according to their nature and incidents, and the common sense of the com-

munity. In the early periods of maritime

commerce, when the oar was the great agent of propulsion, vessels were entirely unlike those of modern times—and each nation and period has had its peculiar agents of commerce and navigation adapted to its own wants and its own waters, and the names and descriptions of ships and vessels are without number. Under the class of mariners in the armed ship are embraced the officers and privates of a little army. In the whale ship, the sealing vessel—the codfishing and herring fishing vessel—the lumber vessel—the freighting vessel—the passenger vessel—there are other functions besides these of mere navigation, and they are performed by men who know nothing of seamanship—and in the great invention of modern times, the steamboat, an entirely new set of operatives, are employed, yet at all times and in all countries, all the persons who have been necessarily or properly employed in a vessel as co-labourers to the great purpose of the voyage, have, by the law, been clothed with the legal rights of mariners—no matter what might be their sex, character, station or profession." Id., § 241, pp 133-134.

By the late 19th and early 20th centuries, federal courts abandoned the navigation test altogether, including in the class of seamen those who worked on board and maintained allegiance to the ship, but who performed more specialized functions having no relation to navigation. The crucial element in these cases was something akin to Benedict's "great purpose of the voyage." Thus, in holding that a fisherman, a chambermaid, and a waiter were all entitled to seamen's benefits, then-Judge Brown, later the author of The Osceola, eschewed reference to navigation: "[A]ll hands employed upon a vessel, except the master, are entitled to a [seaman's lien for wages] if their services are in furtherance of the main object of the enterprise in which she is engaged." The Minna, 11 F 759, 760 (ED Mich 1882). Judge Learned Hand rejected a navigation test explicitly in awarding seamen's

benefits to a bartender: "As I can see in principle no reason why there should be an artificial limitation of rights to those engaged in the navigation of the ship, to the exclusion of others who equally further the purposes of her voyage, . . . I shall decide that the libelant has a lien for his wages as bartender." The J.S. Warden, 175 F 314, 315 (SDNY 1910). In Miller v The Maggie P., 32 F 300, 301 (ED Mo 1887), the court explained that the rule that maritime employment must be tied to navigation had been "pronounced to be inadmissible and indecisive by later decisions." See also The Ocean Spray, 18 F Cas 558, 560-561 (No. 10,412) (D Ore 1876) (sealers and interpreters; citing Benedict, supra); The Carrier Dove, 97 F 111, 112 (CA1 1899) (fisherman); United States v Atlantic Transport Co., 188 F 42 (CA2 1911) (horseman); The Virginia Belle, 204 F 692, 693-694 (ED Va 1913) (engineer who assisted in fishing); The Baron Napier, 249 F 126 (CA4 1918) (muleteer). See generally Norris, Law of Seamen § 2.3; Engerrand & Bale, 24 S Tex L J, at 434-435, and nn 29-30. An 1883 treatise declared: "All persons employed on a vessel to assist in the main purpose of the voyage are mariners, and included under the name of seamen." M. Cohen, Admiralty 239.

[1b] We believe it settled at the time of The Osceola and the passage of the Jones Act that general maritime law did not require that a seaman aid in navigation. It was only necessary that a person be employed on board a vessel in furtherance of its purpose. We conclude therefore that, at the time of its passage, the Jones Act established no requirement that a seaman aid in navigation. Our voyage is not over, however.

C

As had the lower federal courts before the Jones Act, this Court continued to construe "seaman" broadly after the Jones Act. In International Stevedoring Co. v Haverty, 272 US 50, 71 L Ed 157, 47 S Ct 19 (1926), the Court held that a stevedore is a "seaman" covered under the Act when engaged in maritime employment.

Haverty was a longshore worker injured while stowing freight in the hold of a docked vessel. The Court recognized that "as the word is commonly used, stevedores are not 'seamen.'" Id., at 52, 71 L Ed 157, 47 S Ct 19. "But words are flexible. . . . We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." Ibid.

Congress would, and did, however. Within six months of the decision in Haverty, Congress passed the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat (part 2) 1424, as amended, 33 USC §§ 901-950 [33 USCS §§ 901-950]. The Act provides recovery for injury to a broad range of land-based maritime workers, but explicitly excludes from its coverage "a master or member of a crew of any vessel." 33 USC § 902(3)(G) [33 USCS § 902(3)(G)]. This Court recognized the distinction, albeit belatedly, in Swanson v Marra Brothers, Inc., 328 US 1, 90 L Ed 1045, 66 S Ct 869 (1946), concluding that the Jones Act and the LHWCA are mutually exclusive. The LHWCA provides relief for land-based maritime workers, and the Jones Act is restricted to "a master or member of a crew of any vessel": "We must take it that the effect of these provisions of the [LHWCA] is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the Haverty case only such rights to compensation as are given by the [LHWCA]." Id., at 7, 90 L Ed 1045, 66 S Ct 869. "[M]aster or member of a crew" is a refinement of the term "seaman" in the Jones Act; it excludes from LHWCA coverage those properly covered under the Jones Act. Thus, it is odd but true that the key requirement for Jones Act coverage now appears in another statute.

[3a, 4] With the passage of the LHWCA, Congress established a clear distinction between land-based and sea-based maritime workers. The latter, who owe their allegiance to a vessel and not solely to a land-based employer, are seamen. Ironically, on the same day that the Court decided Swanson it handed down Seas Shipping Co. v Sieracki, 328 US 85, 90 L Ed 1099, 66 S Ct 872 (1946). With reasoning remarkably similar to that in Haverty, the Court extended to a stevedore the traditional seamen's remedy of unseaworthiness in those cases where the stevedore "is doing a seaman's work and incurring a seaman's hazards." 328 US, at 99, 90 L Ed 1099, 66 S Ct 872. It took Congress a bit longer to react this time. In 1972, Congress amended the LHWCA to bar longshore and harbor workers from recovery for breach of the duty of seaworthiness. See 86 Stat 1263, 33 USC § 905(b) [33 USCS § 905(b)]; Miles v Apex Marine Corp. 498 US 19, 28, 112 L Ed 2d 275, 111 S Ct 317 (1990). Whether under the Jones Act or general maritime law, seamen do not include land-based workers.

[1c] The LHWCA does not change the rule that a seaman need not aid in navigation. "Member of a crew" and "seaman" are closely related terms. Indeed, the two were often used interchangeably in general maritime cases. See, e.g., The Osceola, 189 US, at 175, 47 L Ed 760, 23 S Ct 483; The Buena Ventura, 243 F 797, 799 (SDNY 1916). There is nothing in these cases, or the LHWCA, to indicate that members of a crew are required to navigate. The "member of a crew" exception in the LHWCA overrules Haverty; "master or member of a crew" restates who a "seaman" under the Jones Act is supposed to be: a sea-based maritime employee.

III

The source of the conflict we resolve today is this Court's inconsistent use of an aid in navigation requirement. The inconsistency arose during the 19 years that passed between the enactment of the LHWCA in 1927 and the decision in Swanson in 1946—19 years during which the Court did not recognize the mutual exclusivity of the LHWCA and the Jones Act. Thus, Jamison v Encarnacion, 281 US 635, 639, 74 L Ed 1082, 50 S Ct 440 (1930), and Uravic v F. Jarka Co. 282 US 234, 238, 75 L Ed 312, 51 S Ct 111 (1931), decided after passage of the LHWCA but before Swanson, reiterated the Haverty rule that stevedores are covered under the Jones Act. In Warner v Goltra, 293

US 155, 79 L Ed 254, 55 S Ct 46 (1934), the Court held that the master of a vessel is a "seaman" under the Act. In so holding, the Court relied on the salutary principle that statutory language "must be read in the light of the mischief to be corrected and the end to be attained." Id., at 158, 79 L Ed 254, 55 S Ct 46. As the Jones Act is a remedial statute, there is no reason that the master of a vessel who suffers a maritime injury should be any less protected than a crew member. Id., at 162, 79 L Ed 254, 55 S Ct 46. All of this was unnecessary, of course. Had the Court recognized, as it did subsequently in Swanson, that the LHWCA further defines Jones Act coverage, the answer was to be found in the plain language of "master or member of a crew of any vessel."

Warner is important for our purposes because it is the Court's first look at the term "seaman" in the Jones Act as it applies to sea-based employees. The Court adopted a definition of "seaman" consistent with that of the lower federal courts in the later pre-Jones Act cases: "[A] seaman is a mariner of any degree, who lives his life upon the sea. It is enough that what he does affects 'the operation and welfare of the ship when she is upon a voyage.' The Buena Ventura, 243 Fed 797, 799, where a wireless operator was brought within the term." Warner, supra, at 157, 79 L Ed 254, 55 S Ct 46. There is no reference to navigation. The Court quoted The Buena Ventura again, specifically on the point of the expanded definition of "seaman": "The word 'seaman' undoubtedly once meant a person who could 'hand, reef and steer,' a mariner in the true sense of the word. But as the necessities of ships increased, so the word 'seaman' enlarged its meaning." The Buena Ventura, supra, at 799, quoted in Warner, supra, at 157, n 1, 79 L Ed 254, 55 S Ct 46. Warner plainly rejected an aid in navigation requirement under the Jones Act.

The confusion began with South Chicago Coal & Dock Co. v Bassett, 309 US 251, 84 L Ed 732, 60 S Ct 544 (1940). Decedent was drowned while working as a deckhand on board a lighter used to fuel steamboats and other marine equipment. His primary duty was to move coal from the boat to other vessels being fueled.

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Petitioner maintained that decedent's widow was not entitled to recovery under the LHWCA because decedent was a "member of the crew" of the lighter. In holding that decedent's widow was entitled to LHWCA coverage, the Court explained that the "member of a crew" exception was meant to exclude only "those employees on the vessel who are naturally and primarily on board to aid in her navigation." Id., at 260, 84 L Ed 732, 60 S Ct 544. Without defining further precisely what aiding in navigation entailed, the Court seemed to be harkening back to an earlier, discarded notion of seaman status.

But the Court was *not* defining "seaman" under the Jones Act; it was construing "member of a crew" under the LHWCA. Bassett was decided before Swanson, at a time when the Court viewed "seaman" as a broader term than "member of a crew." The Bassett Court stated explicitly that it did not equate "member of a crew" under the LHWCA with "seaman" under the Jones Act: "[The LHWCA], as we have seen, was to provide compensation for a class of employees at work on a vessel in navigable waters who, although they might be classed as seamen (International Stevedoring Co. v Haverty, [272 US 50 [71 L Ed 157, 47 S Ct 19] (1926)]), were still regarded as distinct from members of a 'crew.' " Bassett, supra, at 260, 84 L Ed 732, 60 S Ct 544. Bassett did not impose an aid in navigation requirement for seaman status under the Jones Act.

The Court emphasized this point a year later in a one-sentence summary reversal order in Cantey v McLain Line, Inc. 312 US 667, 85 L Ed 1111, 61 S Ct 829 (1941). Cantey was a Jones Act case. In ruling that claimant was not entitled to Jones Act relief, the District Court found the facts of the case indistinguishable from those of Diomede v Lowe, 87 F2d 296 (CA2), cert denied, 301 US 682, 81 L Ed 1340, 57 S Ct 783 (1937). Cantey v McLain Line, Inc. 32 F Supp 1023 (SDNY), aff'd, 114 F2d 1017 (CA2 1940). Diomede had held that a martime worker was entitled to LHWCA coverage because he was not a "member of a crew." Diomede, supra, at 298. The District Court in Cantey concluded that because, following Diomede, claimant

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was not a "member of a crew" under the LHWCA, he was not a "seaman" under the Jones Act. Cantey, supra, at 1023. The court was six years too early in recognizing the mutual exclusivity of the

Jones Act and the LHWCA, and this Court consequently reversed. One of the cases cited in Bassett for the proposition that a "member of a crew" under the LHWCA must aid in navigation is Diomede. See Bassett, supra, at 260, 84 L Ed 732, 60 S Ct 544.

All of this should have made it clear that the aid in navigation test had no necessary connection to the Jones Act. But it did not. In Norton v Warner Co. 321 US 565, 88 L Ed 931, 64 S Ct 747 (1944), another pre-Swanson case, the Court once again addressed the "member of a crew" exception to the LHWCA. Decedent lived on board a barge with no motive power and confined to waters within a 30 mile radius of Philadelphia. His duties included taking general care of the barge. The Court held that decedent was a "member of a crew."

The Court's concerns were very different in Norton than they had been in Bassett. Certain maritime unions, appearing as amici curiae, emphasized that the liability of an employer under the LHWCA is exclusive. This means that those covered under the LHWCA because not "members of a crew" are not entitled to the superior remedies available to seamen under the Jones Act and general maritime law. See Norton, supra, at 570-571, 88 L Ed 931, 64 S Ct 747. Cognizant of its obligation not to narrow unduly the class for whom Congress provided recovery under the Jones Act, the Court explained that the Bassett aid in navigation test was not to be read restrictively:

> "We said in the Bassett case that the term 'crew' embraced those 'who are naturally and primarily on board' the vessel 'to aid in her navigation.' Id., p 260 [84 L Ed 732, 60 S Ct 544]. But navigation is not limited to 'putting over the helm.' It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can 'hand, reef and steer.' Judge Hough pointed out in The Buena Ventura, 243 F 797, 799, that
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> 'every one is entitled to the privilege of a seaman who, like seamen, at all times contributes to the labors about the operation and welfare of the ship when she is upon a voyage.' And see The Minna, 11 F 759; Disbrow v Walsh Bros. 36 F 607, 608 (bargeman). We think that 'crew' must have at least as broad a meaning under the Act." Norton, supra, at 571-572, 88 L Ed 931, 64 S Ct 747.

The Court here expressed a view very close to the Swanson holding that "member of a crew" under the LHWCA is the same as "seaman" under the Jones Act. Norton adopted a conception of "member of a crew" consistent with the established view of "seaman" in pre-Jones Act cases, and consistent with the definition of "seaman" the Court announced in Warner. It is a conception far broader than that announced in Bassett, despite Norton's ostensible interpretation of that case.

With Norton, we again reversed course, steering back toward the Warner and the pre-Jones Act definition of "seaman." Unfortunately, the opinion carried with it the outmoded aid in navigation language. Of course, Norton was a pre-Swanson, pure LHWCA case.

Our Jones Act cases of the late 1950's were not. In a series of brief decisions, the Court afforded seaman status to claimants working on board vessels whose jobs had not even an indirect connection to the movement of the vessel. Despite their results, these cases either assert an aid in navigation requirement or rely on Bassett. See Gianfala v Texas Co. 350 US 879, 100 L Ed 775, 76 S Ct 141 (1955) (summary reversal order) (citing Bassett; seaman status for a driller on board a submersible drilling barge); Senko v LaCrosse Dredging Corp. 352 US 370, 374, 1 L Ed 2d 404, 77 S Ct 415 (1957) (handyman on dredge anchored to shore met the aid in navigation test); Grimes v Raymond Concrete Pile Co. 356 US 252, 253, 2 L Ed 2d 737, 78 S Ct 687 (1958) (per curiam) (citing Bassett; pile driver on submersible radar installation); Butler v Whiteman, 356 US 271, 2 L Ed 2d 754, 78 S Ct 734 (1958) (per curiam) (citing Bassett; handyman on tug). These decisions, to the extent that they

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do not make seaman status contingent upon the seaman's job on board the vessel, are consistent with the Warner and pre-Jones Act definition of "seaman." And they do not conflict with the pre-Swanson LHWCA cases, Bassett and Norton, because those cases do not concern the Jones Act. These late 1950's Jones Act cases are befuddling, however, at least in part because they tie "seaman" under the Jones Act to "member of a crew" under the LHWCA, while ostensibly retaining the Bassett aid in navigation requirement.

Following Butler, we accepted no more of these cases, relegating to the lower courts the task of making some sense of the confusion left in our wake. Our wayward case law has led the lower courts to a "myriad of standards and lack of uniformity in administering the elements of seaman status." Engerrand & Bale, 24 S Tex L J, at 494. The Seventh Circuit expressed its frustration well: "Diderot may very well have had the previous Supreme Court cases in mind when he wrote, 'We have made a labyrinth and got lost in it. We must find our way out.'" Johnson, 742 F2d, at 1060. One of the problems that this Court's Jones Act cases present to the lower courts is that the sundry jobs performed by the seamen in the cases of the late 1950's will not lie with any rational conception of aid in navigation.

IV

We think the time has come to jettison the aid in navigation language. That language, which had long been rejected by admiralty courts under general maritime law, and by this Court in Warner, a Jones Act case, slipped back in through an interpretation of the LHWCA at a time when the LHWCA had nothing to do with the Jones Act.

[1d, 3b] We now recognize that the LHWCA is one of a pair of mutually exclusive remedial statutes that distinguish between land-based and sea-based maritime employees. The LHWCA restricted the definition of "seaman" in the Jones Act only to the extent that "seaman" had been taken to include

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land-based employees. There is no indication in the Jones Act, the LHWCA, or elsewhere, that Congress has excluded from Jones Act remedies those traditional seamen who owe allegiance to a vessel at sea, but who do not aid in navigation.

In his dissent in Sieracki, Chief

Justice Stone chastised the Court for failing to recognize the distinct nature of land-based and sea-based employment. Traditional seamen's remedies, he explained, have been "universally recognized as . . . growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected." 328 US, at 104, 90 L Ed 1099, 66 S Ct 872. It is this distinction that Congress recognized in the LHWCA and the Jones Act. See id., at 106, 90 L Ed 1099, 66 S Ct 872; Swanson v Marra Brothers, Inc. 328 US 1, 90 L Ed 1045, 66 S Ct 869 (1946). It also explains why all those with that "peculiar relationship to the vessel" are covered under the Jones Act, regardless of the particular job they perform.

[1e] We believe the better rule is to define "master or member of a crew" under the LHWCA, and therefore "seaman" under the Jones Act, solely in terms of the employee's connection to a vessel in navigation. This rule best explains our case law and is consistent with the pre-Jones Act interpretation of "seaman" and Congress' land-based/sea-based distinction. All who work at sea in the service of a ship face those particular perils to which the protection of maritime law, statutory as well as decisional, is directed. See generally Robertson, A New Approach to Determining Seaman Status, 64 Texas L Rev 79 (1985). It is not the employee's particular job that is determinative, but the employee's connection to a vessel.

Shortly after Butler, our last decision in this area, the Court of Appeals for the Fifth Circuit attempted to decipher this Court's seaman status cases. See Offshore Co. v Robison, 266 F2d 769 (CA5 1959). The Fifth Circuit correctly

determined that, regardless of its language, this Court was no longer requiring that seamen aid in navigation. Id., at 776. As part of its test for seaman status, Robison requires that a seaman's duties "contribut[e] to the function of the vessel or to the accomplishment of its mission." Id., at 779.

The key to seaman status is employment-related connection to a vessel in navigation. We are not called upon here to define this connection in all details, but we hold that a necessary element of the connection is that a seaman perform the work of a vessel. See Maryland Casualty Co. v Lawson, 94 F2d 190, 192 (CA5 1938) ("There is implied a definite and permanent connection with the vessel, an obligation to forward her enterprise"), cited approvingly in Norton, 321 US, at 573, 88 L Ed 931, 64 S Ct 747. In this regard, we believe the requirement that an employee's duties must "contribut[e] to the function of the vessel or to the accomplishment of its mission" captures well an important requirement of seaman status. It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work.

V

Jon Wilander was injured while assigned to the Gates Tide as a paint foreman. He did not aid in the navigation or transportation of the vessel. The jury found, however, that Wilander contributed to the more general function or mission of the

Gates Tide, and subsequently found that he was a "seaman" under the Jones Act. McDermott argues that the question should not have been given to the jury. The company contends that, as a matter of law, Wilander is not entitled to Jones Act protection because he did not aid in navigation by furthering the transportation of the Gates Tide.

[5] We have said that seaman status under the Jones Act is a question of fact for the jury. In Bassett, an LHWCA case, the Court held that Congress had given to the deputy commissioner, an administrative officer, the authority to determine who is a "member of a crew" under the LHWCA. 309 **[498 US 356]** US, at 257-258, 84 L Ed 332, 60 S Ct 544. If there is evidence to support the deputy commissioner's finding, it is conclusive. Ibid. In Senko, we applied the same rule to findings by the jury in Jones Act cases. 352 US, at 374, 1 L Ed 2d 404, 77 S Ct 415. "[A] jury's decision is final if it has a reasonable basis." Ibid. We are not asked here to reconsider this rule, but we note that the question of who is a "member of a crew," and therefore who is a "seaman," is better characterized as a mixed question of law and fact. When the underlying facts are established, and the rule of law is undisputed, the issue is whether the facts meet the statutory standard. See Pullman-Standard v Swint, 456 US 273, 289, n 19, 72 L Ed 2d 66, 102 S Ct 1781 (1982) (defining a mixed question).

It is for the court to define the statutory standard. "Member of a crew" and "seaman" are statutory terms; their interpretation is a question of law. The jury finds the facts and, in these cases, applies the legal standard, but the court must not abdicate its duty to determine if there is a reasonable basis to support the jury's conclusion. If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a "member of a crew," it is a question for the jury. See Anderson v Liberty Lobby, Inc. 477 US 242, 250-251, 91 L Ed 2d 202, 106 S Ct 2505 (1986). In many cases, this will be true. The inquiry into seaman status is of necessity fact specific; it will depend on the nature of the vessel and the employee's precise relation to it. See Desper v Starved Rock Ferry Co. 342 US 187, 190, 96 L Ed 205, 72 S Ct 216 (1952) ("The many cases turning upon the question whether an individual was a "seaman" demonstrate that the matter depends largely on the facts of the particular case and the activity in which he was engaged at the time of injury"). Nonetheless, summary judgment or a directed verdict is mandated where the facts and the law will reasonably support only one conclusion. Anderson, supra, at 248, 250-251, 91 L Ed 2d 202, 106 S Ct 2505.

The question presented here is narrow. We are not asked to determine if the jury could reasonably have found that Wilander had a sufficient connection to the Gates Tide to be a **[498 US 357]** "seaman" under the Jones Act. We are not even asked whether the jury reasonably found that Wilander advanced the function or mission of the Gates Tide. We are asked only if Wilander should be precluded from seaman status because he did not perform transportation-related functions on board the Gates Tide. Our answer is no. Accordingly, the judgment of the Court of Appeals is affirmed.

EDITOR'S NOTE

An annotation on "Supreme Court's views as to who is "seaman" under Jones Act (46 USCS Appx § 688, and similar predecessor provisions)," appears p 1254, infra.

[498 US 358]

TRINOVA CORPORATION, Petitioner

v

MICHIGAN DEPARTMENT OF TREASURY

498 US 358, 112 L Ed 2d 884, 111 S Ct 818

[No. 89-1106]

Argued October 1, 1990. Decided February 19, 1991.

Decision: Michigan's value added, single business tax, as applied to particular foreign corporation during particular tax year, held not to violate commerce clause (Art I, § 8, cl 3) or due process.

SUMMARY

The state of Michigan levied, on any person with business activity in the state, a tax which was (1) called the "single business tax," and (2) described by some as a type of "value added tax." For purposes of the tax, the total tax base generally consisted of the taxpayer's "value added," calculated under an "addition method" as cost of labor plus depreciation plus interest plus profit. As applied to taxpayers doing business both within and without the state, (1) such taxpayers were authorized to use an apportionment formula which multiplied the total tax base by a factor which consisted of the average of the three ratios of (a) Michigan payroll to total payroll, (b) Michigan property to total property, and (c) Michigan sales to total sales; (2) several further adjustments were permitted, including (a) a deduction by taxpayers of a portion of their capital acquisitions, and (b) a limited reduction by labor-intensive taxpayers of excessive compensation; and (3) the actual tax liability equaled the tax base, as finally adjusted, multiplied by a 2.35-percent tax rate. During 1980, an Ohio corporation which manufactured automobile components made more than $103 million worth of sales in Michigan, but maintained only a 14-employee sales office in the state. The corporation had a net loss of taxable income for that year, but was liable, under the Michigan apportionment formula, for a single business tax of about $294,000, based upon (1) multiplying the corporation's total tax base of about $221 million by an 8.9717-percent factor, which was the average of a (a) payroll ratio of 0.2328 percent, (b) property ratio of 0.0930 percent, and (c) sales ratio of 26.5892 percent; and (2) reducing the initial

Briefs of Counsel, p 1271, infra.

result of about $19.8 million to a tax base, as finally adjusted, of about $12.5 million, through (a) about a $9,000 capital-acquisitions deduction, and (b) about a $7.3 million labor-intensive reduction. In 1985, the Michigan Court of Appeals, an intermediate appellate court, ruled in another case that a state statutory provision entitled certain taxpayers to relief from the apportionment formula for the single business tax. The Ohio corporation then filed an amended return and refund claim for the 1980 tax year. When the Michigan treasury department denied relief, the corporation sued for a refund in the Michigan Court of Claims, which ruled in the corporation's favor based upon the prior Court of Appeals decision. While the department's appeal was pending, a restrictive amendment to the statutory relief provision was enacted, and the Court of Appeals, in ordering a reversal and remand, ruled that the amendment was to be given retroactive effect (166 Mich App 656, 421 NW2d 258). On appeal, the Michigan Supreme Court, in affirming on other grounds without addressing the amendment's retroactivity, expressed the view that (1) the statutory relief provision applied only if necessary to save the single business tax against unconstitutional application; (2) under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, "business activity," as defined for purposes of the single business tax, was not susceptible to accurate analysis when only one component of the total business effort was analyzed; and (3) the averaged ratios of the corporation's payroll, property, and sales were a fair representation of the corporation's business activity in Michigan, thus making the corporation ineligible for relief on statutory or constitutional grounds (433 Mich 141, 445 NW2d 428).

On certiorari, the United States Supreme Court affirmed. In an opinion by Kennedy, J., joined by Rehnquist, Ch. J., and White, Marshall, and O'Connor, JJ., it was held that Michigan's value added, single business tax, as applied to the Ohio corporation during 1980, did not violate either the commerce clause or the due process clause, because (1) the corporation did not dispute that its business activities had a substantial nexus with the state and subjected the corporation to the state's taxing authority; (2) the corporation did not argue that the amount of tax that the corporation was required to pay bore no fair relation to the services provided by the state; (3) it was proper for the state to apportion the tax, for the state, absent an apportionment formula, was unable to assign the tax base and its principal components to separate geographic locations and to separate accounts in each state without serious theoretical and practical difficulty, where, even if the corporation could identify the location of its plant and equipment and much of its compensation, the tax, for apportionment purposes, was (a) an indivisible tax upon a bona fide measure of business activity—the value added—not (b) three separate and independent taxes on compensation, depreciation, and income; (4) the corporation had failed to prove by clear and cogent evidence that the state's apportionment formula provided a distorted result, where the state had consistently applied the formula, the elements of which appeared to reflect a very large share of activities from which value was generated, with further relief for labor-intensive taxpayers such as the corporation; and (5) the corporation had failed to show that the tax discriminated against out-of-state businesses.

Scalia, J., concurring in the judgment, expressed the view that (1) the court's conclusion that Michigan's single business tax was not facially discriminatory was sufficient to comply with the requirements of the commerce clause; and (2) the single business tax did not violate the due process clause, because (a) the corporation conceded that there was a minimal connection between the corporation's interstate activities and the taxing state, and (b) the single business tax did not tax extraterritorial values.

Stevens, J., joined by **Blackmun**, J., dissenting, expressed the view that (1) although the parties referred to the single business tax as a value added tax, the Michigan tax, as a practical matter, was nothing more than an amalgam of three separate taxes on payroll, depreciable fixed assets, and income; (2) because the value added by the two principal components of the single business tax—labor and capital—are fully realized and thus can be precisely quantified and geographically assigned when the actual purchase of labor services and use of capital occur, Michigan's apportionment of a taxpayer's entire payroll and capital expenses resulted in the unconstitutional taxation by Michigan of a portion of the taxpayer's extraterritorial activities, in violation of due process; and (3) with respect to the case at hand, although less than 1 percent of the corporation's property and payroll expenses were incurred within Michigan's borders, the state, by applying its apportionment formula to the corporation's payroll and capital, treated 9 to 10 percent of the corporation's labor and capital costs as if they were in-state expenses.

Souter, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Commerce §§ 238, 244; Constitutional Law § 605 — foreign corporation — state value added tax — apportionment — nondiscrimination — due process

1a-1g. A state's value added, single business tax, as applied during a particular tax year to a foreign manufacturing corporation which had more than $103 million in sales, but maintained only a 14-employee sales office in that state in that year, does not violate either the Federal Constitution's commerce clause (Art I, § 8, cl 3) or the due process clause of the Constitution's Fourteenth Amendment—where the state (1) uses a total tax base calculating "value added" as cost of labor plus depreciation plus interest plus profit, (2) authorizes the use of an apportionment formula which multiplies the total tax base by a factor which consists of the average of the three ratios of (a) in-state payroll to total payroll,

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71 Am Jur 2d, State and Local Taxation §§ 19, 75, 77, 110, 285, 296-299, 305, 306

USCS, Constitution, Art I, § 8, cl 3; Amendment 14

L Ed Digest, Commerce §§ 238, 244; Constitutional Law § 605

L Ed Index, Apportionment and Allocation; Commerce; Corporate Taxes; Taxes

Index to Annotations, Apportionment and Allocation; Discrimination; Taxes

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

What issues will the Supreme Court consider, though not, or not properly, raised by the parties. 42 L Ed 2d 946.

Validity, under commerce clause of Federal Constitution, of state gross receipts or income taxes involving interstate transactions—Supreme Court cases. 34 L Ed 2d 749.

Validity, under Federal Constitution, of state tax on, or measured by, net income of foreign corporation. 3 L Ed 2d 1787.

Construction and application of Uniform Division of Income for Tax Purposes Act. 8 ALR4th 934.

Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation. 67 ALR2d 1322.

(b) in-state property to total property, and (c) in-state sales to total sales, (3) permits several further adjustments to the tax base, including (a) a deduction by taxpayers of a portion of their capital acquisitions, and (b) a limited reduction by labor-intensive taxpayers of excessive compensation, and (4) calculates actual tax liability as the tax base, as finally adjusted, multiplied by a tax rate of 2.35 percent—because (1) the corporation does not dispute that its business activities have a substantial nexus with the state and subject the corporation to the state's taxing authority; (2) the corporation does not argue that the amount of tax that the corporation is required to pay bears no fair relation to the services provided by the state; (3) it is proper for the state to apportion the tax; (4) the corporation has failed to prove by clear and cogent evidence that the state's apportionment formula provides a distorted result; and (5) the corporation has failed to show that the tax discriminates against out-of-state businesses. (Stevens and Blackmun, JJ., dissented from this holding.)

Taxes § 68 — value added tax — what taxable

2. A "pure" value added tax (VAT) —without any special exemptions, deductions, or other adjustments—is neutral in the sense that the VAT taxes all business activity alike, for the same tax burden is borne by (1) all forms of business organization (corporation, partnership, proprietorship); (2) all types of financing (debt, equity); and (3) all methods of production (capital intensive, labor intensive).

Income Taxes §§ 1, 142; Taxes §§ 3, 192 — value added tax — nature — computation

3. A value added tax (VAT) differs in important respects from a corporate income tax: (1) a corporate income tax is based on the philosophy of ability to pay, as such a tax consists of some portion of the profit remaining after a company has provided for its workers, suppliers, and other creditors, but a VAT is a much broader measure of a firm's total activity, because even if a business entity is unprofitable, such an entity, under normal circumstances, adds value to its products and thus will owe some VAT; (2) a VAT correlates more closely to the governmental services received by the taxpayer than does an income tax, because value added is a measure of actual business activity; and (3) a VAT provides a more stable source of revenue than the corporate income tax, because value added does not fluctuate as widely as net income.

Taxes § 192 — value added tax — computation

4a-4c. A value added tax is assessed as a percentage of "value added" for the relevant fiscal period, where value added may be calculated under either a "subtraction" or an "addition" method, each of which provides an identical measurement, given that (1) under the subtraction method, value added equals revenues minus cost of materials, and (2) under the addition method, value added equals cost of labor plus depreciation plus interest plus profit.

Commerce §§ 238, 239, 244, 246; Constitutional Law § 603 — state tax on multistate business — due process

5. A state tax on a multistate business will be sustained against a challenge under the Federal Constitution's commerce clause (Art I, § 8, cl 3), so long as the tax (1) is applied

to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state; this four-part test, while responsive to commerce clause dictates, encompasses as well the requirement, under the due process clause of the Constitution's Fourteenth Amendment, that there be (1) a minimal connection between the interstate activities and the taxing state, and (2) a rational relationship between (a) the income attributed to the state, and (b) the intrastate values of the enterprise; the principles which govern the validity of such state taxes seek (1) to accommodate the necessary abstractions of tax theory to the realities of the marketplace, (2) to avoid formalism, and (3) to rely upon a consistent and rational method of inquiry focusing on the practical effect of the challenged tax.

Commerce §§ 238, 239, 339; Constitutional Law §§ 605, 607; Evidence § 979.5(1) — foreign manufacturing corporation — state value added tax — apportionment — income tax — due process — support in record

6a-6i. For purposes of determining liability under a state's value added, single business tax, it is proper, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, for the state to apportion the "value added" of a foreign manufacturing corporation which had more than $103 million in sales, but maintained only a 14-employee sales office in the state in a particular tax year, because the state, absent an apportionment formula, is unable to assign the tax base and its principal components to separate geographic locations and to separate accounts in each state without serious theoretical and practical difficulty, where the state uses a total tax base calculating "value added" under an "addition method" as cost of labor plus depreciation plus interest plus profit, for (1) even if the corporation can identify the location of its plant and equipment and much of its compensation, the tax, for apportionment purposes, is (a) an indivisible tax upon a bona fide measure of business activity—the value added—not (b) three separate and independent taxes on compensation, depreciation, and income; (2) since the corporation was unprofitable in that year, so that overall value added amounted to less than compensation plus depreciation, a nonapportionment approach would require a conclusion that (a) the corporation added value at its out-of-state factory through the consumption of capital and labor, but (b) the corporate products somehow lost value outside of that process, perhaps between the time that they left the factory and the time that they were delivered to in-state customers; (3) such an approach is incompatible with the rationale of a value added tax and unsupported in the record, where (a) for all that the record shows, production operations might have added little value and the sales office might have added significant value through superior marketing skill, liaison between the corporation and its customers, or mere fortuity, (b) in a unitary enterprise such as the corporation, compensation, depreciation, and profit are not independent variables to be adjusted without reference to the other, and (c) it would distort the application of the tax in both theory and practice to confine the value added consequences of the state market to solely the labor and capital expended by the in-state sales force; (4) given that "value added" also may be calculated by a "subtraction method"—which uses revenues minus cost of materials, but reaches an identical result—(a) the difference between the addition and subtraction methods is one of form and lacks constitutional significance, and (b) under either method, value added includes a residual that cannot be geographically located with economic precision, since, under the subtraction method, even though both revenues and the purchase of materials might be located, value added would itself be a remainder which would be no more assignable than income; (6) the same factors—such as functional integration, centralization of management, and economies of scale—which lead to a conclusion that separate geographical accounting is not constitutionally required for state income taxation of a unitary business make it impossible to determine the location of value added with exact precision; and (7) in the case of a more-or-less integrated business enterprise operating in more than one state, arriving at precise territorial allocations of "value" is often an elusive goal, in both theory and practice. (Stevens and Blackmun, JJ., dissented from this holding).

Commerce § 238 — state tax on multistate business — apportionment

7. Under the Federal Constitution's commerce clause (Art I, § 8, cl 3), apportionment of a state tax on a multistate business is permitted only when precise geographical measurement is not feasible, for to allow apportionment where there is no practical or theoretical justification could provide the opportunity for a state to export tax burdens and import tax revenues.

Commerce § 238; Constitutional Law § 605 — state value added tax — apportionment — foreign corporation — due process

8. For purposes of determining whether apportionment of a state's single business tax is permitted, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, with respect to a foreign manufacturing corporation which had sales and a sales office in the state in a particular tax year, the tax cannot be analyzed as a tax upon "business activity," where the state's tax statute (a) does not say that the tax is a tax upon business activity, but (b) provides that the tax is a tax of 2.35 percent upon the adjusted tax base of every person with business activity in the state which is allocated or apportioned to the state; even though in-state business activity is a threshold requirement for the single business tax, and even though "value added" is the measure of that tax, an attempt to label the tax as a tax upon business activity does not permit the court to forgo examination of the actual tax base and the tax's apportionment provisions.

Evidence § 414 — state tax — validity — assumptions

9. For purposes of determining a state's authority, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's

Fourteenth Amendment, to apportion the state's value added, single business tax—as applied to a foreign manufacturing corporation which had more than $103 million in sales, but maintained only a 14-employee sales office in the state in a particular tax year—the United States Supreme Court can and must assume that the corporation's in-state sales were part of the corporation's essential economic strategies and were an integral part of corporationwide value added, where (1) without those in-state sales, the corporation's value added would have been lowered to a remarkable degree; (2) the market demand that sustained those sales did not arise solely, perhaps not even substantially, from the activities of the corporation's in-state sales personnel; but (3) the requirements of the state market determined the direction of the corporation's design, production, and distribution process; and (4) the corporation, by serving that market and by meeting that market's demands, generated value added in the sums that the corporation did. (Stevens and Blackmun, JJ., dissented from this holding).

Commerce § 239; Constitutional Law § 603 — state tax — due process

10. For purposes of determining whether a state is permitted, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, to apportion the state's value added, single business tax, the Constitution does not require a formalistic analysis resulting in a penalty for the state's selection of an easier calculation method for the state's taxpayers.

Commerce §§ 238, 339; Constitutional Law §§ 605, 607; Evidence § 979.5(1) — state value added tax — apportionment — foreign manufacturing corporation — income tax — due process

11a-11f. A foreign manufacturing corporation which had more than $103 million in sales, but maintained only a 14-employee sales office in the state in a particular tax year fails to prove by clear and cogent evidence that a distorted result, in violation of the Federal Constitution's commerce clause (Art I, § 8, cl 3) or the due process clause of the Constitution's Fourteenth Amendment, is provided by the state's apportionment formula to calculate the corporation's in-state "value added" subject to the state's value added, single business tax for that tax year, where (1) the corporation's liability is based upon an adjusted tax base of about $12.5 million, which base is calculated by (a) multiplying the corporation's total "value added" tax base of about $221 million by an 8.9717-percent factor, which is the average of a (i) 0.2328-percent ratio of in-state payroll to total payroll, (ii) 0.0930-percent ratio of in-state property to total property, and (iii) 26.5892-percent ratio of in-state sales to total sales, and (b) reducing the initial result of about $19.8 million through (a) about a $9,000 capital-acquisitions deduction, and (b) about a $7.3 million reduction for excessive compensation by a labor-intensive taxpayer; (2) the corporation does not contest the internal consistency of the state's apportionment formula; and (3) with respect to the formula's external consistency, (a) a three-factor formula of payroll, property, and sales has been approved for the apportionment of state income taxes, for, even though the one-third weight given to each factor is not precise for every case, the three factors appear in combination to reflect a very large share of the activities by which value is generated, (b) sales do not have to be excluded for value added purposes, for (i) sales, as a measure of market demand, have a profound impact upon the amount of an enterprise's value added, and (ii) value added is not subject to geographic ascertainment, (c) thus, the single business tax does not tax value earned outside the state's borders, and (d) it is not necessary to say for certain whether the three-factor formula or one of several other proposed formulas gives the most accurate calculation, where (i) the corporation has not convincingly demonstrated which formula is the most accurate, and (ii) the corporation gives no estimate of the value added that would take into account both in-state sales activity and in-state market demand for the corporation's products, but (iii) the state has consistently applied a formula, the elements of which appear to reflect a very large share of activities from which value is generated, with further relief for labor-intensive taxpayers such as the corporation. (Stevens and Blackmun, JJ., dissented from this holding.)

Appeal § 1092; Commerce § 330; Constitutional Law § 607 — failure to contest issue — income apportionment — state tax on multistate business — due process

12. With respect to a state tax on a unitary, multistate business, the test for fair income apportionment, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, has two components: (1) internal consistency, that is, the formula must be such that, if applied by every jurisdiction, the formula would result in no more than all of the unitary business' income being taxed, and (2) external consistency, that is, the factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated; the United States Supreme Court, on certiorari to review a foreign corporation's challenge to the apportionment formula of a state's tax, need not consider the internal consistency of the state's formula, where the corporation does not contest such internal consistency.

Evidence § 414 — burden of proof — validity — income tax — value added tax

13. In order to prevail on a claim, under the Federal Constitution's commerce clause (Art I, § 8, cl 3) and under the due process clause of the Constitution's Fourteenth Amendment, that a state tax on the income of a multistate business violates the external consistency test, a taxpayer must prove by clear and cogent evidence that the income attributed to the state (1) is in fact out of all appropriate proportions to the business transacted in that state, or (2) has led to a grossly distorted result; the same test applies to apportionment of a state value added tax.

Appeal § 1662 — effect of decision on other grounds

14a, 14b. On certiorari to review a foreign corporation's claim that a state's value added tax violates the Federal Constitution's commerce clause (Art I, § 8, cl 3) and the due process clause of the Constitution's Fourteenth Amendment, the United States Supreme Court need not consider the state's alternative claim that the state, instead of taxing value added, could have taxed gross receipts of sales into the state, where the Supreme Court concludes that neither the commerce clause nor the due process clause is violated by the state's value added tax, as applied to the corporation in a particular tax year.

Commerce §§ 239, 244; Courts § 124.5; Evidence §§ 918, 979.5(1) — nondiscrimination — state value added tax — motive

15a-15c. A foreign corporation fails to demonstrate that a state's value added, single business tax discriminates against out-of-state businesses in violation of the Federal Constitution's commerce clause (Art I, § 8, cl 3), where (1) the corporation cannot point to any treatment of in-state and out-of-state firms that is discriminatory on its face; (2) in the absence of any facial discrimination, the corporation, other than a vague accusation of discrimination, presents no other standard—not involving fair apportionment—by which the constitutionality of the tax might be considered; and (3) although the state's governor said that the tax was enacted to promote the development and investment of business within the state, (a) it is a laudatory goal in the design of a tax system to promote investment that will provide jobs and prosperity to citizens of the taxing state, (b) states are free to structure their tax systems to encourage the growth and development of intrastate commerce and industry, (c) all the contemporaneous evidence concerning passage of the tax suggests a benign motivation, combined with the practical need to increase revenues, and (d) neither the corporation nor the secondary sources that the corporation relies upon present any evidence that the tax was inspired as a way to export tax burdens or import tax revenues.

Commerce §§ 238, 244 — state tax — nondiscrimination — apportionment

16. With respect to a state tax on a multistate business, the Federal Constitution's commerce clause (Art I, § 8, cl 3) has a deeper meaning that may be implicated even though state provisions do not allocate tax burdens between insiders and outsiders in a manner that is facially discriminatory; thus, the commerce clause requires more than mere facial neutrality, but the content of that requirement is fair apportionment, and the deeper meaning is embodied in the requirement of fair apportionment, as expressed in the tests of internal and external consistency.

Commerce §§ 238, 245; Courts § 124 — state tax — fair share — double taxation — legislative task

17. In reviewing state taxation schemes under the Federal Constitution's commerce clause (Art I, § 8, cl 3), the United States Supreme Court (1) attempts to insure that each state taxes only its fair share of an interstate transaction; and (2) acts as a defense against state taxes which, whether by design or inadvertence, either (a) give rise to serious concerns of double taxation, or (b) attempt to capture tax revenues that, under the theory of the tax, belong of right to other jurisdictions; but (3) declines to undertake the essentially legislative task of establishing a single constitutionally mandated method of taxation.

SYLLABUS BY REPORTER OF DECISIONS

Michigan's single business tax (SBT) is a value added tax (VAT) levied against entities having "business activity" within the State. As part of the SBT computation, a taxpayer doing business both within and without the State must determine its apportioned tax base by multiplying its total value added—which consists of its profit, as represented by its federal taxable income, plus compensation paid to labor, depreciation on capital, and other factors—by the portion of its business activity attributable to Michigan—which consists of the average of three ratios: (1) Michigan payroll to total payroll, (2) Michigan property to total property, and (3) Michigan sales to total sales. During 1980, the tax year in question, petitioner Trinova, an Ohio corporation, maintained a 14-person sales office in Michigan. Under the SBT formula, its 1980 payroll and property apportionment factors were only 0.2328% and 0.0930% respectively, while its sales factor was 26.5892%, representing Michigan sales of over $100 million. Although its 1980 federal taxable income showed a loss of almost $42.5 million, Trinova's SBT computation resulted in a tax of over $293,000. Trinova paid the tax, but subsequently filed an amended return and refund claim, alleging that it was entitled to relief under Michigan law because the SBT's apportionment provisions did not fairly represent the extent of its business activity within the State. The amended return proposed that Trinova's company-wide compensation and depreciation be excluded from its preapportionment value added, and that its actual Michigan compensation and depreciation be added back into its apportioned tax base, which would result in a negative value added apportioned to Michigan and entitle the company to a refund for its entire 1980 SBT payment. When respondent Department of Treasury denied relief, Trinova sued for a refund in the State Court of Claims, which ruled in its favor. However, the State Court of Appeals held that Trinova was not entitled to statutory relief, and the State Supreme Court affirmed, holding, among other things, that the SBT's three-factor apportionment formula did not violate either the Due Process Clause or the Commerce Clause of the Federal Constitution.

Held: As applied to Trinova during the tax year at issue, the SBT's three-factor apportionment formula does not violate either the Due Process Clause or the Commerce Clause.

(a) Under the test stated in Complete Auto Transit, Inc. v Brady, 430 US 274, 279, 51 L Ed 2d 326, 97 S Ct 1076, a state tax levied upon multistate businesses is valid under the Commerce Clause if, as relevant here, it is fairly apportioned and does not discriminate against interstate commerce. Moreover, the Complete Auto test encompasses the Due Process Clause requirement that, inter alia, a rational relationship exist between the income attributed to the State and the intrastate values of the enterprise. See, e.g., Mobil Oil Corp. v Commissioner of Taxes of Vt., 445 US 425, 436-437, 63 L Ed 2d 510, 100 S Ct 1223.

(b) Because the SBT attempts to tax a base that cannot be assigned to one geographic location with any precision, the decision to apportion the tax is not unconstitutional. Although Trinova's compensation and depreciation may appear in isolation to be susceptible of geographic designation, those elements cannot be separated from income, which cannot be located in a single State. The SBT is not a combination or series of several smaller taxes on compensation, depreciation, and income, but is an indivisible tax upon a different, bona fide measure of business activity, the value added. This conclusion is no different from the one this Court has reached in upholding the validity of state apportionment of income taxes. The same factors that prevent determination of the geographic location where income is generated—such as functional integration of the intrastate and extrastate activities of a unitary business enterprise, centralization of management, and economies of scale—make it impossible to determine the location of value added with exact precision. See, e.g., Mobil Oil Corp., supra, at 438, 63 L Ed 2d 510, 100 S Ct 1223; Amerada Hess Corp. v Director, Div. of Taxation, New Jersey Dept. of Treasury, 490 US 66, 74, 104 L Ed 2d 58, 109 S Ct 1617. Thus, although Trinova had no federal income during 1980, it cannot be relieved of tax upon its Michigan business. Such relief would be incompatible with the rationale of a VAT, under which tax becomes due even if the taxpayer was unprofitable, and is unsupported by the record. Trinova's approach would require the conclusion that it added value only at the factory through the consumption of capital and labor, while the record would as easily support a finding that its production operations added little value and its sales offices added significant value. Although Trinova's 14 Michigan sales personnel need not be relied on as the sole, or even a substantial, source of all the value added that can be apportioned fairly to Michigan, it cannot be doubted that, without the company's $100 million in Michigan sales, its total value added would have been lower to a remarkable degree. It distorts the SBT both in application and theory to confine value added consequences of the Michigan market solely to the labor and capital expended by the resident sales force.

(c) The SBT's three-factor apportionment formula cannot be ruled unfair, since Trinova has failed to meet its burden of proving, by clear and cogent evidence, that there is no rational relationship between its tax base measure attributed to Michigan and the contribution of its Michigan business activity to the entire value added process. Cf., e.g., Container Corp. of America v Franchise Tax Bd., 463 US 159, 169, 180-181, 77 L Ed 2d 545, 103 S Ct 2933; Moorman Mfg. Co. v Bair, 437 US 267, 274, 57 L Ed 2d 197, 98 S Ct 2340. This Court has approved the same formula for apportionment of income, see, e.g., Butler Bros. v McColgan, 315 US 501, 86 L Ed 991, 62 S Ct 701, and the formula has gained wide acceptance in that context "because payroll, property, and sales appear in combination to reflect a very large share of the activities *by which value is generated,"* Container Corp., supra, at 183, 77 L Ed 2d 545, 103 S Ct 2933 (emphasis added). Trinova's argument—that the formula leads to a distorted result, out of all proportion to the company's Michigan business, because sales have no relationship to, and add nothing to, the value that compensation and depreciable plant contribute to the Michigan tax base—is rejected, since sales (as a measure of market demand) do have a profound impact upon the amount of an enterprise's value added, and since there is no basis for distinguishing similar arguments that were pressed, and rejected by this Court, with regard to the apportionment of income. Because the three-factor formula causes no distortion, the SBT does not tax value earned outside Michigan. The argument that the value was added in Ohio, by labor and capital, and that no value has been added in Michigan, wrongly assumes that value added is subject to geographic ascertainment and that a sales factor is inappropriate in apportionment. Trinova gives no estimate of the value added that would take account of both its Michigan sales activity and Michigan market demand for its products, whereas the State has consistently applied the three-factor formula and has enacted further provisions giving relief to labor intensive taxpayers like Trinova.

(d) The SBT does not discriminate against interstate commerce. Trinova cannot point to any treatment of in-state and out-of-state firms that is discriminatory on its face. Although American Trucking Assns., Inc. v Scheiner, 483 US 266, 281, 97 L Ed 2d 226, 107 S Ct 2829, states that the Commerce Clause has a "deeper meaning" that may be implicated even absent facial discrimination, that meaning is embodied in the requirement of fair apportionment and does not encompass Trinova's vague accusation of discrimination. Nor is that accusation supported by a statement of Michigan's Governor that the SBT was enacted to promote business development and investment within the State. Such promotion is a laudable goal in the absence of evidence of an impermissible motive to export tax burdens or import tax revenues.

433 Mich 141, 445 NW2d 428, affirmed.

Kennedy, J., delivered the opinion of the Court, in which Rehnquist, C. J., and White, Marshall, and O'Connor, JJ., joined. Scalia, J., filed an opinion concurring in the judgment. Stevens, J., filed a dissenting opinion, in which Blackmun, J., joined. Souter, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Peter S. Sheldon argued the cause for petitioner.
Richard R. Roesch argued the cause for respondent.
Briefs of Counsel, p 1271, infra.

OPINION OF THE COURT

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Justice **Kennedy** delivered the opinion of the Court.

[1a] The principal question before us is whether the three-factor apportionment formula of the Michigan single business tax (SBT), Mich Comp Laws § 208.1 et seq. (1979), violates either the Due Process Clause or the Commerce Clause of the Federal Constitution. The applicability of a three-factor formula to a state income tax is well settled, but we have not considered whether a similar apportionment formula may be applied to a value added tax (VAT). We granted certiorari to consider this question and to determine whether the Michigan SBT discriminates against out-of-state businesses.

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I

Although in Europe and Latin

America VAT's are common, see Lindholm, The Origin of the Value-Added Tax, 6 J Corp L 11 (1980); Due, Economics of the Value Added Tax, 6 J Corp L 61 (1980), in the United States they are much studied but little used. Michigan is the first and, the parties tell us, the only State to have enacted a VAT as a tax on business activity. We begin with a description of value added and VAT's in general, and then discuss the Michigan SBT.

A

Value added is an economic concept. "Value added is defined as the increase in the value of goods and services brought about by whatever a business does to them between the time of purchase and the time of sale." Haughey, The Economic Logic of the Single Business Tax, 22 Wayne L Rev 1017, 1018 (1976) (hereinafter Haughey). The value a business adds to a single product is "the difference between the value of the product at sale and the cost of goods purchased from other businesses that went into the product." Taxation and Economic Policy Office, Michigan Department of Treasury, Analysis of the Michigan Single Business Tax 20-21 (1985) (hereinafter SBT Analysis). It follows that the sale price of a product is the total of all value added by each step of the production process to that point. "The value added of a loaf of bread is the sum of the value contributed at each stage of the production and distribution process. Among others, it includes the contribution of the farmer, miller, baker, wholesaler and retailer." Haughey 1019.

A business "adds value by handling or processing these [goods] with its labor force, machinery, buildings and capital." R. Kleine, Advisory Commission on Intergovernmental Relations, The Michigan Single Business Tax: A Different Approach to State Business Taxation 1 (1978) (hereinafter Kleine). In this litigation, value added usually refers to the

activities of a single business enterprise. The term can, however, be used with regard to a single product, or even an entire economy. "[Value added] is a means of consistently measuring the size of business firms and other economic enterprises comprising the total economy . . . . Gross National Product is virtually equivalent to national value added." Haughey 1017.

[2] One of the acknowledged advantages of value added as a measure of taxation is its neutrality. A VAT is neutral in the sense that it taxes all business activity alike: Under a pure VAT, all forms of business organization (corporation, partnership, proprietorship), all types of financing (debt, equity) and all methods of production (capital intensive, labor intensive) bear the same tax burden.

> "[T]ax factors are minimized in business decisions; inherent advantages and relative efficiencies are allowed to operate in the market economy with minimum tax distortions.
>
> "This neutrality of a value-added tax is in notable contrast to the effects of both the corporation income tax and the payroll taxes. The former, by definition, is applied only to corporations and varies with their reliance on equity rather than debt capital and the efficiency with which they use equity capital—that is, their net profits." Smith, Value-added tax:

the case for, 48 Harv Bus Rev 77, 79 (Nov.—Dec. 1970).

Though neutral in theory, VAT's often depart in practice from the pure value added model because of special exemptions, deductions, and other adjustments. These features can eliminate much of the claim to neutrality. See generally The Value-Added Tax: Lessons from Europe (H. Aaron ed 1981).

[3] A VAT differs in important respects from a corporate income tax. A corporate income tax is based on the philosophy of ability to pay, as it consists of some portion of the profit remaining after a company has provided for its workers,

suppliers, and other creditors. A VAT, on the other hand, is a much broader measure of a firm's total business activity. Even if a business entity is unprofitable, under normal circumstances it adds value to its products and, as a consequence, will owe some VAT. Because value added is a measure of actual business activity, a VAT correlates more closely to the volume of governmental services received by the taxpayer than does an income tax. Further, because value added does not fluctuate as widely as net income, a VAT provides a more stable source of revenue than the corporate income tax. See generally Kleine 3, figure 1. " 'The logic or rationale of the [VAT] rests squarely on the benefits received principle of taxation—government services are essential to the operation of any business enterprise . . . and a part of these public service costs should properly be included in the cost of doing business.' " Id., at 4 (citation omitted).

[4a] The SBT Analysis, at 20-21, provides us with the following simplified example of how value added is determined. Assume a bakery's sole revenue comes from the sale of bread. The bakery's costs consist of materials (flour, sugar, spices, utilities), labor (baker, sales clerk), capital (building, mixer, utensils, oven), and credit (interest paid on loans). Any excess of revenues over costs represents profit. Thus:

Revenue = Cost of Labor + Cost of Materials + Depreciation[1] + Interest + Profit.

Because value added is defined as the difference between the value of products sold (revenues), and the cost of materials going into the products, we can represent value added (for the entire firm) by a second simple equation:

Value added = Revenues − Cost of Materials.

The same result is reached by another common method. If we subtract Cost of Materials from each side of the first equation above, we have:

Revenues − Cost of Materials = Cost of Labor + Depreciation + Interest + Profit.

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[1] In calculating value added, a firm's use of capital is represented by depreciation. Depreciation is the reduction in value of a firm's assets, through wear and tear, obsolescence, or other factors, and thus roughly measures consumption of capital. See McGraw-Hill Dictionary of Modern Economics 130 (3rd ed 1983); P. Samuelson & W. Nordhaus, Economics 902 (12th ed 1985).

So in practice value added can be calculated as *either* Revenues − Cost of Materials; *or* Cost of Labor + Depreciation + Interest + Profit. Not surprisingly, these are referred to as the "subtraction" and the "addition" methods. Each provides an identical measurement of a taxpayer's value added.[2] Once value added is determined, the VAT is assessed as a percentage of the value added for the relevant fiscal period.[3]

B

The Michigan SBT went into effect on January 1, 1976. 1975 Mich Pub Acts 228.[4] The SBT replaced seven different business taxes. Kleine 22; Brief for Respondent 8. Before 1976, a typical manufacturer with business activity in

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[2] See, e.g., Aaron, Introduction and Summary, in The Value-Added Tax: Lessons from Europe 1, 2 (H. Aaron ed 1981) (hereinafter Aaron); Haughey 1018; Special Committee on the Value-Added Tax of the Section of Taxation, American Bar Association, The Choice Between Value-Added and Sales Taxation at Federal and State Levels in the United States, 29 Tax Lawyer 457, 459 (1976) (addition and subtraction methods "reac[h] the same result by the opposite means"); SBT Analysis 20 (addition and subtraction are "two *alternative,* but *equivalent* ways of calculating value added. . . . The important point is that, conceptually, these two calculations are *equal").*

[3] The nations of the European Economic Community (EEC) each levy a value added tax under yet a third method, as a multistage sales tax. See generally Aaron. Under the EEC system, the bakery in our example would be taxed on each sale of bread, and would receive a credit for each purchase of materials going into production of the bread. Similarly, at each other link in the chain of production and distribution, tax is assessed on sales, but credit is provided on purchases. This multistage sales tax system places the burden on the taxpayer to demonstrate that it did, in fact, purchase goods for which it requests a credit. The multistage sales tax version of the VAT has been advocated as promoting tax compliance, though the evidence does not necessarily support this view. See Oldman & Woods, Would a Value-Added Tax System Relieve Tax Compliance Problems, in Income Tax Compliance: A Report of the ABA Section of Taxation Invitational Conference on Income Tax Compliance 317 (1983) (multistage consumption VAT has traditionally been regarded as self-enforcing because the tax credit mechanism is said to induce firms to report transactions accurately).

The requirement of "fiscal frontiers" to record and tax interstate transactions makes the multistage sales tax approach impracticable for an individual State. McLure, State and Federal Relations in the Taxation of Value Added, 6 J Corp L 127, 130-131 (1980); see also Haughey 1025 ("invoice credit method is not workable in a subeconomy without the legal authority and means to control the flow of imports and exports").

On international transactions, the EEC's VAT's are assessed in the jurisdiction of destination. As a result, no tax is applied on exports, while full tax is applied to imports. See id., at 1024-1025; Aaron 4. The destination principle does not, however, purport to determine whether value was added in the jurisdiction of destination, or the jurisdiction of origin.

[4] The SBT was not Michigan's first experiment with a VAT. Between 1953 and 1967, Michigan had utilized a Business Activities Tax (BAT) similar to the Michigan SBT. Although the BAT was a subtraction method VAT, and permitted different adjustments than the SBT, the BAT tax base included "a company's payroll, profits, and capital outlay less depreciation allowed," Lock, Rau, & Hamilton, The Michigan Value-Added Tax, 8 Nat Tax J 357, 363 (1955), and was apportioned among States by the same three-factor formula that is challenged here. See Mich Stat Ann §§ 7.557(1)-7.557(24) (Supp 1955), repealed, 1967 Mich Pub Acts 281. The Michigan Supreme Court upheld the BAT against a challenge on facts remarkably similar to those presented here by Trinova. Armco Steel Corp. v State, 359 Mich 430, 102 NW2d 552, 555-556 (1960) (Ohio corporation had nominal Michigan property and payroll, but substantial Michigan sales). We dismissed an appeal of the judgment in Armco for want of a substantial federal question. Armco Steel Corp. v Michigan, 364 US 337, 5 L Ed 2d 99, 81 S Ct 124 (1960). The arguments in that case focused on whether the BAT was best characterized as a tax on income or a tax on gross receipts, with the concern that under our jurisprudence of the time a "direct" tax on gross receipts from interstate commerce would be unconstitutional.

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Michigan would have been subject to a franchise tax, an income tax, an intangible property tax, and an ad valorem property tax upon inventories. Mitchell, Taxes Repealed and Amended, 22 Wayne L Rev 1029 (1976); Brief for Respondent 8-9. After enactment of the SBT, the same manufacturer would pay only one tax.

The Michigan SBT is an addition method VAT, although it inevitably permits various exclusions, exemptions, and adjustments that depart from the simple value added examples described above. Subject to exemptions contained at Mich Comp Laws § 208.35 (1979), the Michigan SBT is levied against any person with "business activity" within the State of Michigan. § 208.31(1).[5] In order to calculate the amount of a taxpayer's SBT the taxpayer must, first, determine its total tax base. The total tax base consists of the taxpayer's value added, calculated by the addition method: Cost of Labor + Depreciation + Interest + Profit. Under § 208.9, the taxpayer begins with federal taxable income (representing profit), adds other elements that reflect consumption of labor and capital including compensation, depreciation, dividends, and interest paid by the taxpayer, and makes other detailed adjustments.

Second, if a taxpayer does business both within and without Michigan, it must determine the portion of its total value added attributable to Michigan. That portion, the crux of this case, is the average of three ratios: (1) Michigan payroll

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to total payroll, (2) Michigan property to total property, and (3) Michigan sales to total sales. §§ 208.45, 208.46, 208.49, 208.51. The total tax base is multiplied by the portion of business activity attributable to Michigan (under the three-factor formula), and the result, subject to several further adjustments, is the taxpayer's "adjusted tax base." § 208.31(2).

Two further adjustments are relevant here: § 208.23(a), which permits a taxpayer to deduct a portion of its capital acquisitions, and § 208.31(5), which permits a labor-intensive taxpayer to reduce its adjusted tax base by a percentage equal to the percentage by which compensation exceeds 63% of the total tax base, but with such reduction not to exceed a maximum of 37%. Actual tax liability equals the adjusted tax base multiplied by a tax rate of 2.35%.[6]

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[5] "Business activity" is broadly defined as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. . . ." Mich Comp Laws § 208.3 (1979).

II

Trinova, an Ohio corporation, manufactures automobile components. Its principal office is located in Maumee, Ohio, a suburb of Toledo located near the Michigan border. During 1980, the tax year in question, Trinova maintained a fixed presence in Michigan: a sales office of 14 employees who solicited orders, maintained contact with Trinova's Michigan customers, and performed clerical work. Michigan, with its automobile industry, was a major market for Trinova's products. Indeed, Trinova made $103,981,354 worth of sales to Michigan during 1980, 26.5892% of its total sales of $391,065,866. Trinova calculated its 1980 SBT adjusted tax base as follows:

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U.S. taxable income (loss)	($42,466,114)
Add:	
Compensation	$226,356,271
Depreciation	$23,262,909
Dividends, interest, and royalties paid	$22,908,950
Other	$549,526
	Subtotal $230,611,542
Subtract:	
Dividends, interest, and royalties received	($9,486,223)
Total Tax Base	$221,125,319
Apportionment	
Payroll Factor	0.2328%
Property Factor	0.0930%
Sales Factor	26.5892%
Average Factor	8.9717%
Apportioned Tax Base:	
	$221,125,319
	×8.9717%
	=$19,838,700

See 433 Mich 141, 150-152, 445 NW2d 428, 431-433 (1989). Trinova further adjusted its tax base by subtracting a capital acquisition deduction ($9,063) and by taking the maximum (37%) reduction for labor-in-

tensive taxpayers. These adjustments resulted in a 1980 adjusted tax base of $12,492,671. When multiplied by the tax rate of 2.35%, Trinova's tax liability amounted to $293,578 ($12,492,671 × 2.35%).[7] Trinova timely filed its return and paid its tax liability.

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[6] Any taxpayer can, in the alternative, calculate its adjusted tax base as total gross receipts multiplied by the apportionment figure (derived using the three-factor formula) divided by 2. This figure is then multiplied by the 2.35% tax rate to give actual tax liability. § 208.31(2). Under this alternative calculation, no firm's Michigan SBT liability will ever exceed 1.175% of apportioned gross receipts.

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In 1985, a Michigan intermediary Court of Appeals ruled that taxpayers similarly situated to Trinova were entitled to "relief" under Mich Comp Laws § 208.69 (1979), a provision of the SBT. Jones & Laughlin Steel Corp. v Department of Treasury, 145 Mich App 405, 377 NW2d 397 (1985), leave to appeal and reconsideration denied, 424 Mich 895 (1986). At the time, § 208.69 provided that if the apportionment provisions of the SBT did not "fairly represent the extent of the taxpayer's business activity" in Michigan, the taxpayer could, among other alternatives, petition for the employment of "any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base."

Soon after the decision in Jones & Laughlin, Trinova filed an amended return and refund claim for the 1980 tax year. Based on the relief granted in Jones & Laughlin, Trinova proposed that despite admitted company-wide value added of $221 million and Michigan sales of over $100 million, for purposes of the Michigan SBT it should be treated as if it had negative total value added. Value added apportioned to Michigan would also have been negative, and Trinova would have been entitled to a refund for its entire 1980 SBT payment.[8] Upon denial of relief by the Michigan Department of

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Treasury, Trinova sued for a refund in the Michigan Court of Claims, which ruled in Trinova's favor on the authority of Jones & Laughlin. No. 86-10430-CM (May 5, 1987); App to Pet for Cert 42a-51a.

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[7] Trinova could have calculated its tax liability under the alternative gross receipts method, Mich Comp Laws § 208.31(2) (1979), as follows: Total gross receipts ($391,065,866) multiplied by Michigan apportionment factor (8.9717%) divided by two (equals $17,542,628) multiplied by 2.35% equals tax liability of $412,251. This figure amounts to less than 0.4% of Trinova's Michigan sales. Of course, Trinova did not use this method, as it was required to pay only $293,578 (or 0.28% of Michigan sales) under the apportionment method challenged here.

[8] The amended return proposed that Trinova's company-wide compensation and depreciation be excluded from the preapportionment tax base, and actual Michigan compensation and depreciation be added back into the apportioned tax base, as follows:

Total Tax Base—statutory formula:	$221,125,319
Deduct Compensation	($226,356,271)
Deduct Depreciation	($23,262,909)
Trinova's Proposed Total Tax Base:	($28,493,861)
Apportionment (8.9717%)	($2,556,384)
Add Michigan Compensation	$511,774
Add Michigan Depreciation	$2,152
Apportioned Tax Base:	($2,042,458)

433 Mich 141, 147, n 4, 445 NW2d 428, 431, n 4 (1989).

While the Department of Treasury's appeal was pending in the Michigan Court of Appeals, the legislature amended § 208.69. 1987 Mich Pub Acts 39. The amended § 208.69 creates a presumption that the statutory apportionment formula fairly represents the taxpayer's business activity in Michigan unless the adjusted tax base meets one of two tests, neither of which Trinova could satisfy, and which do not merit discussion here. See Mich Comp Laws Ann § 208.69(3) (West Supp 1990). The Court of Appeals referred to the legislature's statement that its Act was intended to be

> "curative, expressing the original intent of the legislature that the single business tax . . . is an indivisible value added type of tax and not a combination or series of several smaller taxes and that relief from formulary apportionment should be granted only under extraordinary circumstances." 1987 Mich Pub Acts 39, § 2.

Relying upon this language, the Court of Appeals determined that the amendment was to be given retroactive effect as a "remedial and procedural" statute and that Trinova was not entitled to statutory relief. 166 Mich App 656, 666, 421 NW2d 258, 262 (1988).

The Michigan Supreme Court affirmed the Court of Appeals. 433 Mich 141, 445 NW2d 428 (1989). Without addressing retroactive application of the amendments to § 208.69, it construed § 208.69 as a "constitutional 'circuit

breaker' " to be applied only if required in order to save the SBT against unconstitutional application. Id., at 156, 445 NW2d, at 434. The court then upheld the SBT against Trinova's federal constitutional challenges. The Michigan Supreme Court noted that formulary apportionment of income taxes is uncontroversial and that it did "not believe that 'business activity' as defined under the [SBT] is susceptible to accurate analysis when only one component of the total business effort is examined." Id., at 163, 445 NW2d, at 438. The court concluded that Trinova's averaged ratios of payroll, property, and sales are a fair representation of the extent of its business activity in Michigan, making it ineligible for relief on statutory or constitutional grounds. Id., at 163-166, 445 NW2d, at 438-439. We granted Trinova's petition for a writ of certiorari. 494 US 1015, 108 L Ed 2d 492, 110 S Ct 1317 (1990).

III

[5] The principles which govern the validity of state taxes levied upon multistate businesses seek to accommodate the necessary abstractions of tax theory to the realities of the marketplace. Under the test stated in Complete Auto Transit, Inc. v Brady, 430 US 274, 279, 51 L Ed 2d 326, 97 S Ct 1076 (1977), we will sustain a tax against Commerce Clause challenge so long as "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." We applied this four-part test in later cases addressing a wide variety of taxes. See Goldberg v Sweet, 488 US 252, 260, n 12, 102 L Ed 2d 607, 109 S Ct 582 (1989) (citing applications in cases involving sales, severance, use, corporate income, and business and occupation taxes).

In Complete Auto, we renounced the formalistic approach of Spector Motor Service, Inc. v O'Connor, 340 US 602, 95 L Ed 573, 71 S Ct 508 (1951), which had prohibited a State from taxing the privilege of doing business in the State, treating it as a tax upon interstate commerce and so beyond the authority of the

State. We seek to avoid formalism and to rely upon a "consistent and rational method of inquiry [focusing on] the practical effect of a challenged tax." Mobil Oil Corp. v Commissioner of Taxes of Vt. 445 US 425, 443, 63 L Ed 2d 510, 100 S Ct 1223 (1980). The Complete Auto test, while responsive to Commerce Clause dictates, encompasses as well the due process requirement that there be "a 'minimal connection' between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise." Mobil Oil Corp., supra, at 436-437, 63 L Ed 2d 510, 100 S Ct 1223; see also Amerada Hess Corp. v Director, Div. of Taxation, New Jersey Dept. of Treasury, 490 US 66, 80, 104 L Ed 2d 58, 109 S Ct 1617 (1989) (Scalia, J., concurring).

[1b] In this Court, Trinova does not dispute that its business activities have a substantial nexus with Michigan and subject it to the State's taxing authority. Nor does Trinova argue that the amount of tax it is required to pay bears no fair relation to the services provided by the State. Complete Auto, supra, at 279, 51 L Ed 2d 326, 97 S Ct 1076. Trinova instead contends that Michigan's SBT fails the other two prongs of the Complete Auto test: that the SBT is not fairly apportioned as applied to Trinova and that the tax discriminates against interstate commerce. We consider these claims and begin with the matter of apportionment.

A

[6a] Trinova's claim that apportionment of the tax is unconstitutional concentrates on the elements of the apportionment formula. The original rationale for apportionment of income was the difficulty of identifying the geographic source of the income earned by a multistate enterprise. See Underwood Typewriter Co. v Chamberlain, 254 US 113, 120-121, 65 L Ed 165, 41 S Ct 45 (1920) (legislature "faced with the impossibility of allocating specifically the profits earned by the [taxpayer's] processes conducted within its borders"). As we stated the problem in Container Corp. of America v Franchise Tax Bd. 463 US 159, 192, 77 L Ed 2d 545, 103 S Ct 2933 (1983): "Allocating income among various taxing jurisdictions

bears some resemblance . . . to slicing a shadow." Trinova argues that because its SBT tax base is composed in large part of compensation and depreciation, elements which can be assigned to a geographic source, we must reject apportionment altogether.

[6b, 7] We can accept the premise that apportionment is permitted only when precise geographic measurement is not feasible, for to allow apportionment where there is no practical or theoretical justification could provide the opportunity for a State to export tax burdens and import tax revenues. The Commerce Clause prohibits this competitive mischief. The issue becomes whether, without an apportionment formula, Michigan can assign the SBT tax base and its principal components to separate geographic locations and to separate accounts in each State. Michigan has decided it cannot do so without serious theoretical and practical difficulty, and upon review of the case we accept that determination.

[8] We reject at the outset, however, arguments by Michigan and some amici curiae that the Michigan SBT can be analyzed as a tax upon "business activity." Brief for Council of State Governments et al. as Amici Curiae 11. The statute does not say that the SBT is a tax upon business activity, but rather that it is a "tax of 2.35% *upon the adjusted tax base* of every person *with business activity in this state* which is allocated or apportioned to this state." Mich Comp Laws § 208.31(1) (1979) (emphasis added). While Michigan business activity is a threshold requirement for the tax, and value added is its measure, labeling the SBT a tax on "business activity" does not permit us to forgo examination of the actual tax base and apportionment provisions. "A tax on sleeping measured by the number of pairs of shoes you have in your closet is a tax on shoes." Jenkins, State Taxation of Interstate Commerce, 27 Tenn L Rev 239, 242 (1960).

[6c] Trinova errs in the opposite direction. It would dissect the tax base as if the SBT were three separate and independent taxes: a tax on compensation, a tax on depreciation, and a

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tax on income, each apportioned. Trinova insists that compensation and depreciation can be located and can be separated from the total value added calculation. As a result, Trinova would be taxed upon its Michigan compensation and Michigan depreciation. It would owe no additional tax upon income apportionable to Michigan, because it had no income during the relevant tax year.

This characterization, and with it Trinova's constitutional argument, fails. Doubtless Trinova can identify the location of its plant and equipment and much of its compensation. The Michigan SBT, however, is not three separate and independent taxes, and Trinova cannot purport to identify the geographic source of value added by assuming that two elements can be located in a single State while the third cannot. Trinova's proposed apportionment for the 1980 tax year, n 8, supra, provides a good example of the problems that accompany its argument.

In 1980, Trinova's company-wide value added amounted to much less than its compensation plus depreciation. In short, Trinova was unprofitable. Under a VAT, however, tax becomes due in any event. Trinova's approach would require us to conclude that Trinova added value at the factory through the consumption of capital and labor, but that its products somehow lost value outside of this process, perhaps between the time they left the factory and the time they were delivered to customers in Michigan. This approach is incompatible with the rationale of a VAT and is unsupported in the record.

For all this record shows, Trinova's production operations might have added little value and its sales offices might have added significant value, through superior marketing skill, liaison between the company and its customers, or mere fortuity. See Moorman Mfg. Co. v Bair, 437 US 267, 272, 57 L Ed 2d 197, 98 S Ct 2340 (1978) (record lacked analysis of what portion of profits was apportionable to sales, to manufacturing, or to other phase of company's operations).

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But we need not rely upon Trinova's 14 Michigan sales personnel as the source of all the value added that can be apportioned fairly to Michigan. In a unitary enterprise, compensation, depreciation, and profit are not independent variables to be adjusted without reference to each other. If Trinova had paid an additional $100 million in compensation during 1980, there is no way of knowing whether, or to what extent, value added would have increased. In fact, value added would not have increased so long as revenues did not increase. These elements of value added are inextricable, codependent variables.

[6d, 9] Without Trinova's $100 million in 1980 Michigan sales, the company's value added would have been lower to a remarkable degree. The market demand that sustained those sales did not arise solely, perhaps not even substantially, from the activities of Trinova's 14 Michigan sales personnel. But there can be little doubt that requirements of the Michigan market determined the direction of Trinova's design, production, and distribution process. By serving that market and meeting its demands, Trinova generated value added in the sums that it did. We can and must assume that Michigan sales were a part of the company's essential economic strategies and were an integral part of company-wide value added. It distorts the tax both in application and theory to confine value added consequences of the Michigan market solely to the labor and capital expended by the resident sales force.

[4b, 6e] Trinova's attempted characterization is arguable only because Michigan calculates value added by the addition method. The addition and subtraction methods of calculating value, however, are but two different paths to the same result. See n 2, supra. Had Michigan calculated the SBT tax base by the subtraction method, reporting total revenues minus total cost of materials, Trinova's characterization would collapse of its own weight. Trinova could geographically locate its revenues and even determine where it purchased its materials. The Michigan apportionment formula

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assumes as much. But were Trinova to calculate value added based upon the location of its revenues, it would apportion a much greater share of its value added to Michigan (26.5892%) than was apportioned under Michigan's three-factor formula (8.9717%). An apportionment of value added based solely on the source of revenues is no less justifiable than an apportionment based solely upon the location of compensation or depreciation.

[6f, 10] The difference between the addition and subtraction methods is one of form and lacks constitutional significance. Michigan chose the addition method of calculating value added as a convenience to taxpayers, for whom federal taxable income provided an easy starting point. Kleine 6-7 (discussing advantages of addition method); SBT Analysis 21 (same). The Constitution does not require a formalistic analysis resulting in a penalty for Michigan's selection of an easier calculation method for its taxpayers.

[4c, 6g] Both methods of calculation, moreover, illustrate the justification for the State's adoption of an apportionment formula. Under either method, value added includes a remainder or residual that cannot be located with economic precision. Under the addition method, value added contains the element of income, one calculated by and dependent upon factors (revenues minus total costs) not included in the addition method equation; under the subtraction method, value added is itself a remainder, no more assignable than income. It would be impractical to locate value added by a geographic test. We thus agree with the Michigan Legislature's statement that the SBT is not, for apportionment purposes, "a combination or series of several smaller taxes," 1987 Mich Pub Acts 39, § 2, but an "indivisible," ibid., tax upon a different, bona fide measure of business activity, the value added.

[6h] This conclusion is no different from the one we have reached in upholding the validity of state apportionment of income taxes. As with a VAT, the discrete components of a state income tax may appear in isolation susceptible of geographic

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designation. Nevertheless, since Underwood Typewriter Co. v Chamberlain, 254 US 113, 65 L Ed 165, 41 S Ct 45 (1920), we have recognized the impracticability of assuming that all income can be assigned to a single source. In this respect, Trinova's argument becomes a familiar and often rejected genre of taxpayer challenge:

> "[A]pportionability often has been challenged by the contention that . . . the source of [particular] income may be ascertained by separate geographical accounting. The Court has rejected that contention so long as the intrastate and extrastate activities formed part of a single unitary business. See Butler Bros. v McColgan, 315 US 501, 506-508 [86 L Ed 991, 62 S Ct 701] (1942); Ford Motor Co. v Beauchamp, 308 US 331, 336 [84 L Ed 304, 60 S Ct 273] (1939); cf. Moorman Mfg. Co. v Bair, 437 US, at 272 [57 L Ed 2d 197, 98 S Ct 2340]. In these circumstances, the Court has noted that separate accounting, while it purports to isolate portions of income received in various States, may fail to account for contributions to income resulting from functional integration, centralization of management, and economies of scale. Butler Bros. v McColgan, 315 US, at 508-509 [86 L Ed 991, 62 S Ct 701]. Because these factors of profitability arise from the operation of the business as a whole, it becomes misleading to characterize the income of the business as having a single identifiable 'source.' Although separate geographical accounting may be useful for internal auditing, for purposes of state taxation it is not constitutionally required." Mobil Oil Corp. 445 US, at 438, 63 L Ed 2d 510, 100 S Ct 1223.

In a recent challenge to this unitary business principle, we rejected the argument that particular assignable costs of a business should be excluded from a broader tax base. Amerada Hess Corp. v Director, Div. of Taxation, N. J. Dept. of Treasury, 490 US 66, 104 L Ed 2d 58, 1617 (1989). We considered the New Jersey corporate income tax, which used federal taxable income as a benchmark and required certain adjustments (as does the Michigan SBT). New Jersey required oil companies to

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add back into income any deduction taken for taxes paid under the federal windfall profits tax. The taxpayers objected that the windfall profits tax is "an exclusively out-of-state expense because it is associated with the production of oil outside New Jersey." Id., at 74, 104 L Ed 2d 58, 109 S Ct 1617.

In like manner, Trinova objects to the SBT's requirement that it add compensation and depreciation to federal taxable income on the grounds that these are, with limited exception, out-of-state expenses. In Amerada Hess Corp. we rejected outright the idea that geographically assignable costs of production must be excluded from an apportionment of income.

> "[J]ust as each [taxpayer's] oil-producing revenue—as part of a unitary business—is not confined to a single State, Exxon Corp. 447 US, at 226 [65 L Ed 2d 66, 100 S Ct 2109], . . . so too the costs of producing this revenue are unitary in nature. See Container Corp. 463 US, at 182 [77 L Ed 2d 545, 103 S Ct 2933] (the costs of a unitary business cannot be deemed confined to the locality in which they are incurred)." Ibid.

[1c, 6i] The reasoning of Amerada Hess Corp. applies with equal force to the case here. The same factors that prevent determination of the geographic location where income is generated, factors such as functional integration, centralization of management, and economies of scale, make it impossible to determine the location of value added with exact precision. In concluding that Michigan can apportion the SBT, we merely reaffirm what we have written before: "In the case of a more-or-less integrated business enterprise operating in more than one State, . . . arriving at precise territorial allocations of 'value' is often an elusive goal, both in theory and in practice." Container Corp. 463 US, at 164, 77 L Ed 2d 545, 103 S Ct 2933.

B

[1d, 11a] Having determined that Michigan's SBT attempts to tax a base that cannot be assigned to one location with any precision, and that apportionment is proper, we must next

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consider whether Michigan's apportionment formula for Trinova's value added is fair.

[11b, 12] Container Corp. states our test for fair income apportionment:

> "The first, and again obvious, component of fairness in an apportionment formula is what might be called internal consistency—that is, the formula must be such that, if applied by every jurisdiction, it would result in no more than all of the unitary business' income being taxed. The second and more difficult requirement is what might be called external consistency—the factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated." Id., at 169, 77 L Ed 2d 545, 103 S Ct 2933.

Trinova does not contest the internal consistency of the SBT's apportionment formula, and we need not consider that question.

[11c, 13] Instead, Trinova argues that the SBT apportionment formula fails the external consistency test. In order to prevail on such a challenge, an income taxpayer must prove "by 'clear and cogent evidence' that the income attributed to the State is in fact 'out of all appropriate proportions to the business transacted . . . in that State,' [Hans Rees' Sons, Inc.] 283 US, at 135 [75 L Ed 879, 51 S Ct 385], or has 'led to a grossly distorted result,' [Norfolk & Western R. Co.] 390 US, at 326 [19 L Ed 2d 1201, 88 S Ct 995]." Moorman Mfg. Co. 437 US, at 274, 57 L Ed 2d 197, 98 S Ct 2340. We conclude that the same test applies to apportionment of a VAT. Trinova must demonstrate that, in the context of a VAT, there is no rational relationship between the tax base measure attributed to the State and the contribution of Michigan business activity to the entire value added process. See Container Corp., supra, at 180-181, 77 L Ed 2d 545, 103 S Ct 2933.

[11d] The Michigan SBT uses the same three-factor apportionment formula we first approved for apportionment of income in Butler Brothers v McColgan, 315 US 501, 86 L Ed 991, 62 S Ct 701 (1942). This standard has become "something of a benchmark against

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which other apportionment formulas are judged." Container Corp., supra, at 170, 77 L Ed 2d 545, 103 S Ct 2933; see also Moorman Mfg. Co., supra, at 282, 57 L Ed 2d 197, 98 S Ct 2340 (Blackmun, J., dissenting); id., at 283-284, 57 L Ed 2d 197, 98 S Ct 2340 (Powell, J., dissenting). Although the one-third weight given to each of the three factors—payroll, property, and sales—is not a precise apportionment for every case, the formula "has gained wide approval precisely because payroll, property, and sales appear in combination to reflect a very large share of the activities *by which value is generated."* Container Corp., supra, at 183, 77 L Ed 2d 545, 103 S Ct 2933 (emphasis added). The three-factor formula is widely used and is included in the Uniform Division of Income for Tax Purposes Act, 7A ULA 331 (1990 Cum Supp) (approved in 1957 by the National Conference of Commissioners on Uniform State Laws and the American Bar Association).

Trinova argues that on the facts of this case, the three-factor formula leads to a distorted result, out of all proportion to the business done by Trinova in Michigan. Trinova's Michigan payroll constituted 0.2328% of total payroll, its Michigan property constituted 0.0930% of total property, and its Michigan sales constituted 26.5892% of total sales. The three-factor formula averages these ratios, with the result that 8.9717% of Trinova's value added, or $19,838,700, is assigned to Michigan. Because Trinova is a labor-intensive taxpayer, and can deduct capital acquisitions, the tax base is further reduced to $12,492,671.

In this Court, Trinova proposes an alternative two-factor apportionment, excluding the sales factor. Under the two-factor formula, only 0.1629% of Trinova's value added, or $360,213, would be assigned to Michigan. Brief for Petitioner 33-34.[9]

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Although the three-factor formula "can be justified as a rough, practical approximation of the distribution of either a corporation's sources of income or the social costs which it generates," General Motors Corp. v

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[9] Trinova's proposed two-factor apportionment differs drastically from the apportionment Trinova requested in the Michigan state courts. Under the approach Trinova took in state court, following Jones & Laughlin Steel Corp. v Department of Treasury, 145 Mich App 405, 377 NW2d 397 (1985), Trinova's apportioned tax base would be −$2,042,458. See n 8, supra. Under the two-factor formula that Trinova now urges upon us, it is $360,213.

District of Columbia, 380 US 553, 561, 14 L Ed 2d 68, 85 S Ct 1156 (1965), Trinova argues that the formula does not reflect how the value added tax base is generated. The principal flaw, it contends, is that the formula includes a sales factor. "Sales have no relationship to, and add nothing to, the value that [compensation and depreciable plant] contribute to the tax base in Michigan." Brief for Petitioner 31. Trinova's position finds some support among economists. See Barlow & Connell, The Single Business Tax, in Michigan's Fiscal and Economic Structure 673, 704 (H. Brazer ed 1982); Kleine 7, 14, n 5.

We have, supra, at 376, 112 L Ed 2d, at 906, already concluded that sales (as a measure of market demand) do have a profound impact upon the amount of an enterprise's value added, and therefore reject the complete exclusion of sales as somehow resulting in more accurate apportionment. We further reject this critique because it cannot distinguish application of the three-factor formula to a VAT from application to an income tax. In fact, nearly identical criticisms were levied against the three-factor formula as a method for apportioning income by economists who theorize that income (like value added) is the product of labor and capital, and that the marketplace contributes nothing to production of income. See Studenski, The Need for Federal Curbs on State Taxes on Interstate Commerce: An Economist's Viewpoint, 46 Va L Rev 1121, 1131-1132 (1960); Harriss, Economic Aspects of Interstate Apportionment of Business Income, 37 Taxes 327, 362-363 (1959); Harriss, Interstate Apportionment of Business Income, 49 Am Econ Rev 398, 400 (1959). If it were not for their age, these criticisms could have been taken almost verbatim from Trinova's brief:

> "[S]ales-by-destination are not a proper allocation factor . . . . Taken by themselves, they do not necessarily represent the location of the company's productive income-creating effort. Only the location of the company's capital and labor, which may be wholly different from the destination of the sales, identifies the location of that effort and hence the situs for the imposition of a state income tax upon it." Studenski, supra, at 1131-1132.

Despite such criticism, the Uniform Division of Income for Tax Purposes Act decided upon an income apportionment formula that included sales, and the importance of sales in generating value has been acknowledged by this Court. Container Corp. 463 US, at 183, 77 L Ed 2d 545, 103 S Ct 2933. Thus, as we responded to a similar argument in Moorman Mfg. Co., whatever the merit of Trinova's argument that sales do not contribute to value added "from the standpoint of economic theory or legislative policy, it cannot support a claim in this litigation that [the State] in fact taxed profits not attributable to activities within the State during the yea[r 1980]." 437 US, at 272, 57 L Ed 2d 197, 98 S Ct 2340. Trinova gives no basis for distinguishing the same arguments that were pressed, and rejected, with regard to the apportionment of income. We could not accept Trinova's argument that the sales factor distorts Michigan's apportionment formula without rejecting our precedents which approve the use of the same formula to apportion income.

As we find no distortion caused by the three-factor formula, it follows that the Michigan SBT does not tax "value earned outside [Michigan's] borders." ASARCO Inc. v Idaho Tax Comm'n, 458 US 307, 315, 73 L Ed 2d 787, 102 S Ct 3103 (1982). The argument that the value was added in Ohio, by labor and capital, and that no value has been added in Michigan assumes that value added is subject to geographic ascertainment and assumes further the inappropriateness of a sales factor in apportionment. For the reasons we have given, we reject both arguments.

[498 US 384]

[1e, 11e, 14a] We need not say for certain which method—unadjusted apportionment by the three-factor formula ($19,838,700), apportionment by Trinova's alternative two-factor formula ($360,213), Trinova's Jones & Laughlin apportionment urged in state court (−$2,042,458), or the adjusted tax base as calculated in Trinova's original 1980 return ($12,492,671)—gives the most accurate calculation of Trinova's value added in Michigan. Trinova has not convincingly demonstrated which figure is most accurate. Trinova gives no estimate of the value added that would take account of both its Michigan sales activity and Michigan market demand for its products. Michigan, on the other hand, has consistently applied a formula, the elements of which appear to reflect a very large share of the activities by which value is generated, with further relief for labor intensive taxpayers such as Trinova. Trinova has failed to meet its burden of proving "by 'clear and cogent evidence,'" Moorman Mfg. Co. supra, at 274, 57 L Ed 2d 197, 98 S Ct 2340, that the State of Michigan's apportionment provides a distorted result.[10]

C

[1f, 15a] Trinova also urges that the Michigan SBT should be struck down because it discriminates against out-of-state businesses in violation of the Commerce Clause. Trinova cannot point to any treatment of in-state and out-of-state firms that is discriminatory on its face, as in the cases it cites. See, e.g.,

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Westinghouse Electric Corp. v Tully, 466 US 388, 393, 80 L Ed 2d 388, 104 S Ct 1856 (1984) (tax credit was limited to gross receipts from export products shipped from a regular place of business of the taxpayer within New York); Boston Stock Exchange v State Tax Comm'n, 429 US 318, 324-328, 50 L Ed 2d 514, 97 S Ct 599 (1977) (tax facially discriminated against transactions on securities exchanges located outside of New York and had been enacted in an effort to discourage growth of such exchanges); Halliburton Oil Well Cementing Co. v Reily, 373 US 64, 10 L Ed 2d 202, 83 S Ct 1201 (1963) (sales tax exempted isolated sales within State, but use tax lacked a similar exemption for similar isolated sales outside of the State).

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[10] **[11f, 14b]** As an alternative ground for upholding the tax, Michigan reminds us that, instead of taxing value added, it could have taxed gross receipts of sales into Michigan. We have repeatedly upheld such taxes. Standard Pressed Steel Co. v Washington Revenue Dept. 419 US 560, 564, 42 L Ed 2d 719, 95 S Ct 706 (1975); General Motors Corp. v Washington, 377 US 436, 448, 12 L Ed 2d 430, 84 S Ct 1564 (1964); McGoldrick v Berwind-White Coal Mining Co. 309 US 33, 58, 84 L Ed 565, 60 S Ct 388, 128 ALR 876 (1940). While we accept the analogy Michigan has drawn between a VAT and an income tax, we recognize that the SBT also bears some similarities to a gross-receipts tax. Further, the SBT's alternative method of taxation (based upon gross receipts) might provide an additional limit on any distortion or possibility that out-of-state values might be taxed. See n 6, supra. In light of our disposition, we need not address these arguments.

[15b, 16] In the absence of any facial discrimination, Trinova recalls our statement in American Trucking Assns., Inc. v Scheiner, 483 US 266, 281, 97 L Ed 2d 226, 107 S Ct 2829 (1987), that "the Commerce Clause has a deeper meaning that may be implicated even though state provisions . . . do not allocate tax burdens between insiders and outsiders in a manner that is facially discriminatory." The Commerce Clause requires more than mere facial neutrality. The content of that requirement is fair apportionment. The "deeper meaning" to which American Trucking refers is embodied in the requirement of fair apportionment, as expressed in the tests of internal and external consistency. Other than the vague accusation of discrimination, Trinova presents no other standard by which we might consider the constitutionality of the Michigan SBT.

[15c] In further support of its discrimination argument, Trinova relies upon the 1987 statement of Michigan's Governor that the SBT was enacted " 'to promote the development and investment of business within Michigan.' " Executive Message of Governor James J. Blanchard to the Michigan Supreme Court, Nov. 6, 1987, App to Pet for Cert 73a. This statement helps Trinova not at all. It is a laudatory goal in the design of a tax system to promote investment that will provide jobs and prosperity to the citizens of the taxing State. States are free to "structur[e] their tax systems to

encourage the growth and development of intrastate commerce and industry." Boston Stock Exchange, supra, at 336, 50 L Ed 2d 514, 97 S Ct 599. Although Trinova repeats the Governor's statement in an attempt to demonstrate an impermissible motive on the part of the State, all the contemporaneous evidence concerning passage of the SBT suggests a benign motivation, combined with a practical need to increase revenues.[11] Neither Trinova nor the secondary sources it relies upon present any evidence that the SBT was inspired as a way to export tax burdens or import tax revenues.

IV

[1g, 17] In reviewing State taxation schemes under the Commerce Clause, we attempt "to ensure that each State taxes only its fair share of an interstate transaction." Goldberg v Sweet, 488 US 252, 260-261, 102 L Ed 2d 607, 109 S Ct 582 (1989). We act as a defense against state taxes which, whether by design or inadvertence, either give rise to serious concerns of double taxation, or attempt to capture tax revenues that, under the theory of the tax, belong of right to other jurisdictions. We have always "declined to undertake the essentially legislative task of establishing

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[11] According to Kleine, proponents of the SBT argued as follows: (1) because of Michigan's volatile economy, the State's corporate income tax had proven unpredictably cyclical, and therefore a poor source of revenue. The SBT would provide a much broader tax base, and thus prove a more stable revenue source; (2) the SBT would lessen the tax burden on capital, thereby encouraging new investment; (3) the SBT would replace numerous taxes, resulting in less paperwork for both the taxpayer and the tax collector; (4) the SBT would not discriminate against businesses on the basis of their forms of organization; and (5) the SBT would tax inefficient and efficient firms equally for their use of government services, whereas an income tax would burden more heavily efficient, highly profitable firms. In addition, at the time of the SBT's enactment, Michigan faced a fiscal crisis. The legislature provided that the new SBT would overlap with the old corporate franchise tax, resulting in additional cash flow of $180 million. Kleine 20-23. The argument that a VAT would permit "exporting" the tax to taxpayers outside the State "was not used to any great extent by the proponents of the Michigan [SBT]." Id., at 23.

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a 'single constitutionally mandated method of taxation.'" Id., at 261, 102 L Ed 2d 607, 109 S Ct 582, quoting Container Corp. 463 US, at 171, 77 L Ed 2d 545, 103 S Ct 2933. We do not say today whether other States should adopt a value added tax, or whether Michigan's three-factor formula is the only acceptable method of apportionment. We do hold that, as applied to Trinova during the tax year at issue, the Michigan SBT does not violate the Due Process or Commerce Clauses of the Constitution.

The judgment of the Supreme Court of Michigan is affirmed.

Justice **Souter** took no part in the consideration or decision of this case.

SEPARATE OPINIONS

Justice **Scalia,** concurring in the judgment.

As the Court notes, ante, at 384, 112 L Ed 2d, at 911, the Michigan single business tax is not facially discriminatory. Since I am of the view that this suffices to comply with the requirements of the Commerce Clause, see Amerada Hess Corp. v Director, Div. of Taxation, N. J. Dept. of Treasury, 490 US 66, 80, 104 L Ed 2d 58, 109 S Ct 1617 (1989) (Scalia, J., concurring in judgment); Tyler v Pipe Industries, Inc. v Washington State Dept. of Revenue, 483 US 232, 265, 97 L Ed 2d 199, 107 S Ct 2810 (1987) (Scalia, J., concurring in part and dissenting in part), I would forgo the additional Commerce Clause analysis articulated in Complete Auto Transit, Inc. v Brady, 430 US 274, 279, 51 L Ed 2d 326, 97 S Ct 1076 (1977). Some elements of that analysis, however, are relevant to the quite separate question whether the tax complies with the requirements of the Due Process Clause, see Mobil Oil Corp. v Commissioner of Taxes of Vt. 445 US 425, 436-437, 63 L Ed 2d 510, 100 S Ct 1223 (1980); Amerada Hess Corp., supra, at 80-81, 104 L Ed 2d 58, 109 S Ct 1617 (Scalia, J., concurring in judgment).

Trinova concedes that there is a minimal connection between its interstate activities and the taxing State, see Mobil, supra; ante, at 373, 112 L Ed 2d, at 904. The only issue, then, is whether the tax violates the Due Process Clause by taxing extraterritorial values. For the reasons stated in Parts III-A and III-B of the Court's opinion, I agree that it does not.

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Justice **Stevens,** with whom Justice **Blackmun** joins, dissenting.

Although the parties refer to Michigan's "Single Business Tax" (SBT) as a "Value Added Tax" (VAT), that term does not appear in the text of the statute. The text of the relevant Act describes the SBT as a tax on "certain commercial, business, and financial activities."[1] As a practical matter, Michigan's SBT is nothing more than an amalgam of three separate taxes: a tax on payroll, a tax on depreciable fixed assets, and a tax on income. Payroll and depreciation represent over 90 percent of the SBT base, and the productive activities that are measured by payroll and depreciation take place at geographic locations that are readily identifiable. Because Michigan's SBT uses an apportionment formula to tax a portion of those activities occurring outside Michigan, I depart from the Court's analysis and conclude that the state taxation scheme violates established principles of due process.

I

Petitioner Trinova's executive offices and manufacturing facilities are located in Ohio. Most of its employees live and work in Ohio. In fact, significantly less than one percent of

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Trinova's capital assets and labor were employed in Michigan in 1980.[2] The company operated at a substantial loss in that year. The question presented is whether the fact that 26 percent of Trinova's unprofitable sales were made to Michigan customers provides a constitutionally sufficient justification for the State to attribute to Michigan (and thus to tax) approximately nine percent of Trinova's productive activities, almost all of which actually occurred in Ohio.

In upholding the constitutionality of the SBT against a Due Process Clause challenge, the Court today concludes that even though the bulk of Trinova's property and payroll are located outside Michigan, it does not follow that the bulk of its value-adding activities are located outside Michigan and thus are not attributable to or taxable by Michigan. Rather, the Court assumes that the value added to a product is largely contingent upon the revenue that the product generates when it is sold in the marketplace. Because the value added by Trinova's use of labor and capital in Ohio is not realized until Trinova's product is sold in Michigan and the product is given market value by consumers, the Court concludes that Michigan's sales contribute greatly to the value of Trinova's product, and thus that allowing a portion of the value added by Trinova's business activities in Ohio to be attributed to Michigan through use of an apportionment formula is justified.

The Court's assumption that value

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[1] The preamble to the statute states, in part:

"AN ACT to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities . . . ." See Mich Comp Laws § 208.1, p 4 (1986).

The Michigan Supreme Court's explanation of the significance of the label "value added tax" describes it as a tax upon business activity. In its opinion below, the Michigan court explained:

"In short, a value added tax is a tax upon business activity. The act employs a value added measure of business activity, but its intended effect is to impose a tax upon the privilege of conducting business activity within Michigan. It is not a tax upon income. MCL 208.31(4); MSA 7.558(31)(4)." 433 Mich 141, 149, 445 NW2d 428, 431-432 (1989).

This Court today also states that "value added is a measure of actual business activity." Ante, at 364, 112 L Ed 2d, at 898.

[2] The Company's total payroll was $226,356,271; its Michigan payroll was only $511,774 or less than one-fourth of one percent. Its Michigan depreciation was only $2,152, representing less than one-tenth of one percent of its entire depreciation.

added from labor and capital is not realized until the product is sold, however, is simply wrong. Finished goods, even though stored in a warehouse and not yet sold, are more valuable than raw materials. Moreover, under the Michigan statute, the revenues generated by the sales of the finished product are reflected in the net income component of the tax base. Thus,

in this case, because Trinova operated at a loss, the value added by labor and capital is reduced, rather than enhanced, by the ultimate sales made in Michigan. It necessarily follows that allowing Michigan to apportion out-of-state expenses incurred for fixed assets and labor on the basis of Michigan sales in effect allows Michigan to tax extraterritorial business activity.

Under this Court's due process jurisprudence, a State may constitutionally tax only those interstate business activities or income to which it has a rational nexus. See Container Corp. of America v Franchise Tax Bd. 463 US 159, 165-166, 77 L Ed 2d 545, 103 S Ct 2933 (1983). However, in the context of state income taxes on "unitary" interstate businesses, our cases allow States to deviate from the fixed rule of geographic accounting in favor of a more flexible system of formulary apportionment. In so doing, we have cautioned that "[t]he functional meaning of this requirement [of a rational nexus between the taxing State and the taxed activities] is that there be some sharing or exchange of value not capable of precise [geographic] identification or measurement . . . which renders formula apportionment a reasonable method of taxation." Id., at 166, 77 L Ed 2d 545, 103 S Ct 2933.

The Court today extends its analysis upholding the constitutionality of income apportionment as an exception to the general rule of geographic accounting to situations in which the original justification for the use of an imprecise apportionment formula no longer holds. Unlike the income of a unitary business, which we before have recognized may not be precisely allocated, the two principal elements of Michigan's SBT—property and payroll—are subject to precise geographic identification and thus do not warrant being subject to an apportionment formula.

The Court concedes, as it must, that far less than one percent of Trinova's capital assets and labor were employed in Michigan in 1980, but rejects the logical result of such analysis by concluding that it does not necessarily follow that far less than one percent of Trinova's "value added" can be precisely

identified as having been realized outside Michigan. Instead, the Court concludes that the value added by Trinova's factors of production located outside of Michigan cannot be precisely determined until the ultimate product is sold and the market value or revenue that the product commands is considered. As the Court states, "[t]he Michigan SBT . . . is not three separate and independent taxes, and Trinova cannot purport to identify the geographic source of value added by assuming that two elements can be located in a single State while the third cannot." Ante, at 375, 112 L Ed 2d, at 905. Rather, "[i]n a unitary enterprise, compensation, depreciation, and profit are not independent variables to be adjusted without reference to each other. If Trinova had paid an additional $100 million in compensation during 1980, there is no way of knowing whether, or to what extent, value added would have increased. *In fact, value added would not have increased so long as revenues did not increase."* Ante, at 376, 112 L Ed 2d, at 906 (emphasis added).

Driving the Court's analysis is the recognition that Trinova in 1980 netted a loss of over $42 million. This, the Court concludes, means that the ultimate value added by Trinova's use of labor and capital resources was not equivalent to its actual payroll and capital expenses. Resisting the perceived awkwardness of finding "that Trinova added value at the factory through the consumption of capital and labor, but that its products somehow lost value outside of this process," id., at 375, 112 L Ed 2d, at 905, the Court holds that the value added by capital and labor should not be deemed to be realized and should not be geographically assigned until Trinova's product is sold, and that the measure of value added by payroll and capital expenses should be adjusted by the ultimate revenue the product generates.

II

The Court's assumption that value added by property and payroll is not realized and cannot be determined until the product is sold is belied by the rationale underlying the VAT.

The "concept of value added . . . is derived from the most basic of economic facts—the scarcity of resources—and hence consistently measures the amount of scarce labor and capital resources used up (and not available for use elsewhere) in every economic activity." See Haughey, The Economic Logic of the Single Business Tax, 22 Wayne L Rev 1017, 1018 (1976). That a product is ultimately unprofitable does not diminish the amount of resources a company utilized in manufacturing the product. Nor does the value added to the economy or gross national product by the company's purchase of labor and utilization of capital diminish when the product is not sold or is sold for a net loss.

Rather, value added is fully realized at each stage of the production process—at the stages where labor services are sold and paid for by the company in the form of payroll expenses and where capital is consumed. The amount of value added at these intermediate stages of production is the price paid for the labor services and for the capital expended. See ibid. (value added may be determined by "add[ing] up all of the payments paid internally to the owners of the labor and capital used"). Regardless of the profitability (or unprofitability) of the ultimate product, value added by labor and capital is not eliminated or diminished if the ultimate product is unable to command equivalent value or revenue in the marketplace.[3] As the Court itself concedes early in its opinion,

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[3] Unlike the tax bases under the VAT schemes that are found in European and South American countries, see ante, at 365-366, n 3, 112 L Ed 2d, at 899, the tax base under Michigan's SBT is affected by the revenues that the product brings in only insofar as such revenues are reflected in the company's net income, which is a component of the tax base under the additive method. In the foreign jurisdictions utilizing the VAT, however, the starting point for computing the tax base is the revenue received by the taxpayer from sales made in the taxing jurisdiction, with certain amounts exempted or subtracted from the in-state revenues. Although measuring value added with reference to revenues might therefore be warranted in traditional European models of the VAT, it is unjustified under Michigan's SBT, because the income component of the VAT base in Michigan already accounts for revenues.

[498 US 393]

"[e]ven if a business entity is unprofitable, under normal circumstances it adds value to its products and, as a consequence, will owe some VAT." Ante, at 364, 112 L Ed 2d, at 898. This immunity of the VAT base from the vagaries of the marketplace is the basic justification for the SBT: "[B]ecause value added does not fluctuate as widely as net income, a VAT provides a more stable source of revenue than the corporate income tax." Ibid.

Concededly, under the Michigan statute, the task of calculating precisely Trinova's value added by its capital and labor resources without looking to its ultimate sales or profit is complicated by the unprofitability of Trinova's business during the tax year in question. Under Michigan's method for calculating the SBT base, the corporation's profit is added to the sum of labor costs and capital expenditures (consisting of depreciation and interest expenses) and represents the value added by the corporation's skill and entrepreneurial effort. Insofar as Trinova in 1980 netted a loss of over $42 million, Trinova's VAT base was actually reduced by "addition" of its profit to its labor and capital costs.

It is nevertheless clear that value added under the additive method is realized at each stage of the production process and is undiminished if the product suffers a net loss. That Michigan chooses to allow a company's VAT base to be reduced by the extent of its unprofitability does not in any way lead to the Court's conclusion that the value added by labor and capital is not realized when (and where) those resources are purchased, and that the amount of that value added to the economy is not equivalent to the price paid by the company for those resources.

Because the value added by the two principal components of Michigan's SBT—labor and capital—are fully realized and thus can be precisely quantified and geographically assigned when the actual purchase of labor services and use of capital occur, Michigan's apportionment of a company's entire payroll and capital expenses results in the unconstitutional taxation

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by Michigan of a portion of the taxpayer's extraterritorial activities.[4] In fact, in Trinova's case, although less than one percent of Trinova's property and payroll expenses are incurred within its borders, Michigan, by applying the apportionment formula to payroll and capital, treats nine to ten percent of Trinova's labor and capital costs as if they were in-state expenses.[5] Because such extraterritorial taxation violates basic principles of due process, I respectfully dissent.

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[4] "The taxation of property not located in the taxing State is constitutionally invalid, both because it imposes an illegitimate restraint on interstate commerce and because it denies to the taxpayer the process that is his due. A State will not be permitted, under the shelter of an imprecise allocation formula or by ignoring the peculiarities of a given enterprise, to 'project the taxing power of the state plainly beyond its borders. . . .' Any formula used must bear a rational relationship, both on its face and in its application, to property values connected with the taxing State." Norfolk & Western R. Co. v Missouri State Tax Comm'n, 390 US 317, 325, 19 L Ed 2d 1201, 88 S Ct 995 (1968) (footnote omitted).

[5] The Court implies that it would be unjust to apportion Trinova's net income without also apportioning its company-wide labor and appreciation. Ante, at 381-382, n 9, 112 L Ed 2d, at 909. My reaction to the facts of this case is just the opposite. Because the appor-

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tioned share of the taxpayer's net loss far exceeds the actual use of labor and capital in Michigan, there is no more justification for imposing the SBT on Trinova than there would be to collect an income tax from a taxpayer whose company-wide operations, as well as its Michigan operations, produced a substantial net loss.

[498 US 395]

MOSHE GOZLON-PERETZ, Petitioner

v

UNITED STATES

498 US 395, 112 L Ed 2d 919, 111 S Ct 840

[No. 89-7370]

Argued October 30, 1990. Decided February 19, 1991.

Decision: Supervised release under § 1002 of Anti-Drug Abuse Act of 1986 (ADAA) held to apply to all § 1002 offenses committed between enactment of ADAA and 1987 effective date of Sentencing Reform Act of 1984.

SUMMARY

The Sentencing Reform Act of 1984 (18 USCS §§ 3551 et seq.) replaced special parole—which was required to be served by federal drug offenders following their incarceration and was administered by the United States Parole Commission—with a method of postconfinement monitoring known as supervised release, which was to be overseen by the sentencing court. To insure orderly implementation of this change, Congress delayed the effective date of the Reform Act's supervised release provisions until November 1, 1987. On October 27, 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (ADAA), which, in various sections, including § 1002 (21 USCS § 841(b)(1)(A)), mandated terms of "supervised release" following incarceration resulting from convictions of certain drug offenses. Although some ADAA sections specified a November 1, 1987 effective date, § 1002 did not specify an effective date. An accused was convicted of certain February 1987 heroin-related offenses to which § 1002 applied if effective. Rejecting the accused's argument that no form of postconfinement supervision was appropriate under the ADAA for offenses committed prior to November 1, 1987, the United States District Court for the District of New Jersey, ruling that special parole was applicable under § 1002 to offenses committed between October 27, 1986 and November 1, 1987, imposed concurrent prison terms to be followed by concurrent 5-year terms of special parole. The United States Court of Appeals for the Third Circuit, vacating the sentence and remanding, expressed the view that under the plain language of § 1002, the accused should have been sentenced to 5-year terms of supervised release rather

Briefs of Counsel, p 1272, infra.

than special parole, because the supervised release provisions in § 1002 became effective on the ADAA's date of enactment (894 F2d 1402).

On certiorari, the United States Supreme Court affirmed. In an opinion by Kennedy, J., expressing the unanimous view of the court, it was held that the supervised release requirements of § 1002 apply to all drug offenses in categories specified by § 1002 that were committed between October 27, 1986 and November 1, 1987, because (1) neither the language nor the evident purpose of § 1002 gives a clear congressional direction to delay the effective date of the requirements, where (a) Congress' silence in regard to the effective date for either § 1002 or the ADAA as a whole contrasted with the express effective date provisions for other discrete ADAA sections, and (b) the ADAA's apparent purpose was to rectify a mistake by which earlier federal drug legislation mandated postconfinement supervision for many small-time drug offenders but exempted big-time narcotics offenders; (2) the power and duty to impose supervised release was explicit in the ADAA as of 1986, since (a) the reasonable assumption was that Congress, when it used the term "supervised release" in the ADAA, legislated with reference to the term's definition in the Reform Act, and (b) the ADAA's draftsman might well have concluded that the Reform Act would be effective by the time Federal District Courts would begin to oversee supervised release procedures concerning offenses committed between October 27, 1986 and November 1, 1987; and (3) § 1002's plain language foreclosed the imposition of special parole for crimes committed between October 27, 1986 and November 1, 1987.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21 Am Jur 2d, Criminal Law § 535; 25 Am Jur 2d, Drugs, Narcotics, and Poisons §§ 48, 48.5; 59 Am Jur 2d, Pardon and Parole § 74

9 Federal Procedure, L Ed, Criminal Procedure §§ 22:1102, 22:1107; 13 Federal Procedure, L Ed, Food, Drugs, and Cosmetics § 35:667

7 Federal Procedural Forms, L Ed, Criminal Procedure § 20:1084

13 Am Jur Proof of Facts 391, Criminal Drug Addiction and Possession

8 Am Jur Trials 573, Defense of Narcotics Cases

18 USCS §§ 3551 et seq.; 21 USCS § 841(b)(1)(A)

L Ed Digest, Criminal Law § 97; Drugs, Narcotics, and Poisons § 8; Statutes § 10

L Ed Index, Drugs and Narcotics; Parole, Probation, and Pardon; Sentence or Punishment

Index to Annotations, Drugs and Narcotics; Parole, Probation, and Pardon; Sentence and Punishment

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

United States Supreme Court's views as to retroactive effect of its own decisions announcing new rules. 65 L Ed 2d 1219.

Supreme Court's views as to the "rule of lenity" in the construction of criminal statutes. 62 L Ed 2d 827.

Supreme Court's views on weight to be accorded to pronouncements of legislature, or members of legislature, respecting meaning or intent of previously enacted statute. 56 L Ed 2d 918.

Comment note.—Retroactive or merely prospective operation of new rule adopted by court in overruling precedent—federal cases. 14 L Ed 2d 992.

Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 ALR Fed 767.

Prospective or retroactive operation of overruling decision. 10 ALR3d 1371.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Criminal Law § 97; Drugs, Narcotics, and Poisons § 8; Statutes §§ 10, 102, 103, 109, 134, 154, 164 — sentencing — special parole — supervised release — effective date

1a-1j. The supervised release requirements of § 1002 of the Anti-Drug Abuse Act of 1986 (ADAA) (21 USCS § 841(b)(1)(A))—which mandates minimum periods of supervised release following imprisonment resulting from conviction for certain federal drug offenses—apply to all drug offenses in categories specified by § 1002 that were committed between the October 27, 1986 enactment of the ADAA and the November 1, 1987 effective date of the Sentencing Reform Act of 1984 (18 USCS §§ 3551 et seq.)—which, for drug offenders, replaced special parole with supervised release—because (1) Congress did not give a clear direction to delay the effective date of § 1002's supervised release provisions, since (a) Congress' silence in regard to the effective date for either § 1002 or the ADAA as a whole, for neither of which does the ADAA specify an effective date, contrasts with the express effective date provisions for other discrete ADAA sections, (b) given the ADAA's apparent purpose to rectify a mistake by which earlier federal drug legislation mandated postconfinement supervision for many small-time drug offenders but exempted big-time narcotics offenders, it seems unlikely that Congress intended the ADAA's enactment date not to be the ADAA's effective date, (c) Congress' December 1987 enactment insuring that other ADAA provisions permitting certain departures from mandatory minimum sentences would apply to offenses committed before November 1, 1987 can be explained only if Congress believed that the § 1002's minimum penalties had gone into effect upon enactment, (d) § 1002 changed from special parole to supervised release independent of the ADAA's general changeover provision that included a November 1, 1987 effective date, and (e) it is unlikely that Congress intended to delay the third part of § 1002's three-part penalty scheme of imprisonment, fines, and supervised release for a year while the first two parts took effect at once; (2) although "supervised release" is defined in the Reform Act rather than in the ADAA, the power and duty to impose supervised release is explicit in the ADAA as of 1986, since (a) the reasonable assumption is that Congress, when it used the term "supervised release" in the ADAA, knew of the full definition in the Reform Act and legislated with reference to it, and (b) the draftsman of the ADAA might well have concluded, with respect to drug offenses committed between October 27, 1986 and November 1, 1987, that the Reform Act would be effective by the time Federal District Courts would begin to oversee supervised release procedures; and (3) § 1002's plain language forecloses the imposition of special parole for crimes committed between October 27, 1986 and November 1, 1987, where (a) there is no reason to doubt that Congress used the term "supervised release" in § 1002 knowing that the term differed from "special parole," and (b) Congress' possible lack of attention to some of the collateral effects of the change from special parole to supervised release does not justify disregard of the change itself.

Statutes § 10 — effective date

2. Absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment.

Statutes § 108.5 — language included and omitted

3. Where Congress includes particular language in one section of a statute but omits such language in another section of the same statute, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

Statutes § 153 — construction — view of later Congress

4. The view of a later Congress (1) does not establish definitively the meaning of an earlier enactment, but (2) does have persuasive value.

Statutes § 173 — specific and general provisions

5. A statute's specific provision controls over one of more general application.

Statutes §§ 100, 109, 164 — language and policy — whole statute

6. In determining the meaning of a statute, the United States Supreme Court looks to not only the particular statutory language, but also the design of a statute as a whole and to its object and policy.

Statutes § 134 — consideration of other statutes — specialized terms

7. The fact that a related legislative enactment, referred to when interpreting specialized statutory terms, has its own effective date that is later than the effective date of the statute whose terms are being interpreted does not defeat the utility of this interpretational device, because courts may refer to enacted but not yet effective legislation to interpret statutory terms if the legislature intends the reference.

Criminal Law § 97; Drugs, Narcotics, and Poisons § 8; Statutes §§ 164, 186 — supervised release — rule of lenity — plain language

8. The rule of lenity will not apply to prevent an accused who was convicted of certain heroin-related offenses committed in February 1987 to which § 1002 of the Anti-Drug Abuse Act of 1986 (ADAA) (21 USCS § 841(b)(1)(A))—which (1) was enacted on October 27, 1986, (2) specifies no effective date, and (3) mandates minimum periods of supervised release following imprisonment resulting from conviction for certain federal drug offenses—pplies from being sentenced to any form of post-confinement supervision, because (1) the rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers; and (2) applying well-established principles of statutory construction, the United States Supreme Court has concluded that Congress, through its use of plain language in § 1002, intended narcotics offenders to receive supervised release between October 27, 1986 and the November 1, 1987 effective date of the Sentencing Reform Act of 1984 (18 USCS §§ 3551 et seq.)—which, for federal drug offenders, replaced special parole with supervised release.

SYLLABUS BY REPORTER OF DECISIONS

The Sentencing Reform Act of 1984 (Reform Act) eliminated special parole, supervised by the United States Parole Commission, for drug offenders after incarceration and established conditions for a new system of supervised release to be overseen by the sentencing court. However, the supervised release provisions' effective date was delayed until November 1, 1987. In October 1986, the Anti-Drug Abuse Act of 1986 (ADAA) was enacted, which, in § 1002, sets minimum and maximum sentences and mandates terms of supervised release for certain drug offenses. Some ADAA sections, but not § 1002, specified a November 1, 1987, effective date. Petitioner was convicted of, inter alia, offenses to which § 1002 applies that occurred after the ADAA's enactment but before the effective date of the Reform Act's supervised release provisions. The District Court sentenced him to concurrent prison terms and imposed concurrent 5-year terms of special parole for each offense, ruling that Congress intended that parole be imposed in cases where the offenses were committed in the interim between the ADAA's enactment and November 1, 1987, and rejecting petitioner's argument that no post-confinement supervision was appropriate for offenses committed during that time. The Court of Appeals vacated the sentence, holding that § 1002's plain language required that petitioner be sentenced to terms of supervised release rather than special parole.

Held: Supervised release applies for all drug offenses in the categories specified by ADAA § 1002 that were committed after the ADAA was enacted but before November 1, 1987.

(a) Section 1002 contains no provision for its effective date and therefore took effect on its date of enactment. There is no clear direction to the contrary by Congress, whose silence here contrasts with its expression of effective dates for other ADAA sections. Nothing about Congress' apparent purpose in enacting § 1002—to rectify an error in the Controlled Substances Act that would have required supervised release for small- but not big-time drug offenders—rebuts this presumption. In arguing that Congress must have intended to postpone all of § 1002's penalty provisions in order to avoid creating a conflict with §§ 1007(a) and 1009(a)—which, effective November 1, 1987, authorize shorter sentences for certain offenders who cooperate with the Government—since § 1002's mandatory minimum sentence requirements otherwise would eliminate the possibility of such shorter sentences for offenses committed during the interim period, petitioner is mistaken. Congress corrected these problems in December 1987 by permitting departures from mandatory minimum sentences for cooperating offenders whose offenses were committed before November 1, 1987, a move that can be explained only if Congress believed that the mandatory penalties had gone into effect as of the ADAA's date of enactment. Also rejected is petitioner's argument that the delayed implementation of § 1004, which provides that all references to "special parole" in the Controlled Substances Act were to be changed to "supervised release," delayed the effect of § 1002's supervised release provisions. Since a specific provision controls one of a more general application and § 1002 made the change from special parole to supervised release independent of § 1004, § 1004's general changeover provision does not apply. Moreover, it is unlikely that Congress intended to delay some, but not all, of § 1002's provisions.

(b) That the term "supervised release" was defined in the enacted, but not yet effective, Reform Act rather than in the ADAA does not mean that the term as used in the ADAA had no significance before November 1, 1987. It is not uncommon to refer to other, related legislative enactments when interpreting specialized statutory terms, a device whose utility is not defeated by the fact that the Act referred to is not yet effective. At the time the ADAA was enacted, the Reform Act had all of the weight and dignity of a deliberate, considered enactment of Congress, presented to and approved by the President; and it is reasonable to assume that Congress, when it passed the ADAA, knew that the full definition of supervised release existed in the Reform Act and legislated with reference to it. It is also possible that Congress, knowing that it was unlikely that anyone committing a drug offense during the interim period would be released from custody before November 1, 1987, concluded that in all such cases the Reform Act would be effective at the time a district court began its duties under the supervised release program. Section 1002's plain language also forecloses the possibility that the rules governing special parole should apply to crimes committed in the interim period.

(c) The absence of an effective date provision in § 1002 does not create an ambiguity calling for the invocation of the rule of lenity. While § 1002 may have created some minor inconsistencies with other statutory provisions, its postconfinement supervision provisions are not ambiguous.

894 F2d 1402, affirmed.

Kennedy, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

Peter Goldberger argued the cause for petitioner.

Amy L. Wax argued the cause for respondent, pro hac vice, by special leave of court.

Briefs of Counsel, p 1272, infra.

OPINION OF THE COURT

[498 US 397]

Justice **Kennedy** delivered the opinion of the Court.

[1a] This case presents a problem in the interpretation of the federal drug enforcement laws and their reference to the method of postconfinement monitoring known as "supervised release." Before 1984, drug offenders sentenced to prison were required to serve terms of special parole following their incarceration. The Sentencing Reform Act of 1984 eliminated special parole and, in its place, established conditions for the new system of supervised release. To ensure the orderly implementation of this change, Congress delayed the effective date of the Sentencing Reform Act's supervised release provisions until November 1, 1987. A year before that date, however, Congress enacted the Anti-Drug Abuse Act of 1986 (ADAA), which mandates terms of supervised release for certain drug offenses. In this case we consider whether the ADAA's supervised release requirements apply to offenses committed during the interim period after the ADAA was enacted but before the Sentencing Reform Act's provisions for supervised release became effective.

I

Petitioner Moshe Gozlon-Peretz was convicted under 21 USC § 846 [21 USCS § 846] on one count of participation in a conspiracy to distribute in excess of a kilogram of heroin, and under 21 USC § 841(a)(1) [21 USCS § 841(a)(1)] and 18 USC § 2 [18 USCS § 2] on counts of distributing 240 grams of heroin and of possession with intent to distribute in excess of one kilogram of heroin. The substantive offenses occurred on February 26, 1987, nearly four months after the ADAA's enactment but eight months before the

[498 US 398]

November 1, 1987, effective date of the Sentencing Reform Act's provisions for supervised release. Following a remand by the Third Circuit for reasons not at issue here, see United States v Levy, 865 F2d 551, 559-560 (1989) (en banc), the District Court sentenced petitioner to 20 years on the conspiracy count and to concurrent 15-year sentences for the substantive offenses.

At the sentencing hearing, the Government and petitioner disagreed as to whether some form of postconfinement supervision was required for petitioner's substantive offenses. At issue then, and at issue in the case before us, was the interpretation of § 1002 of the ADAA, codified at 21 USC § 841(b)(1)(A) (1982 ed, Supp IV) [21 USCS § 841(b)(1)(A)]. Although ADAA § 1002 specifies a term of "supervised release," the Government argued in the District Court that a term of special parole was required. According to the Government, because § 1002 directs that drug offenders receive postconfinement supervision, and because drug offenders were sentenced to special parole before the ADAA was enacted, Congress intended that special parole be imposed during the interim before the effective date of the Sentencing Reform Act, November 1, 1987. Petitioner, contending that Congress intended to delay the effective date of the ADAA's supervised release provisions, argued that no form of postconfinement supervision was appropriate under the ADAA for offenses committed prior to November 1, 1987. The District Court accepted the Government's position and imposed concurrent 5-year terms of special parole for each of petitioner's substantive offenses.

The Third Circuit vacated the sentence and remanded, holding that, under the plain language of § 1002, petitioner should have been sentenced to two 5-year terms of supervised release rather than special parole. 894 F2d 1402 (1990). According to the Third Circuit, the supervised release provisions in § 1002 became effective on the ADAA's date of enactment, October 27, 1986, and apply to all offenses

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committed after that date. Because of a split among the Courts of Appeals as to the appropriate form of postconfinement supervision for the interim period in question, we granted certiorari. 496 US 935, 110 L Ed 2d 660, 110 S Ct 3212 (1990). We now affirm.

II

A

We first trace in more detail the relevant statutory history of the federal drug enforcement penalty scheme and of federal sentencing in general. We begin with the Controlled Substances Act, Pub L 91-513, Tit II, § 401(b), 84 Stat 1260, codified at 21 USC § 841(b) [21 USCS § 841(b)]. When first enacted, § 841(b) subjected offenders involved in the manufacture or distribution of schedule I and II narcotic substances, including heroin, to a maximum of 15 years' imprisonment and, if a prison sentence was imposed, to a mandatory 3-year term of special parole. 21 USC § 841(b)(1)(A) (1982 ed) [21 USCS § 841(b)(1)(A)].[1] Special parole was "a period of supervision served upon completion of a prison term" and administered by the United States Parole Commission. Bifulco v United States, 447 US 381, 388, 65 L Ed 2d 205, 100 S Ct 2247 (1980). See 21 USC § 841(c) (1982 ed) [21 USCS § 841(c)], repealed, Pub L 98-473, Tit II, § 224(a)(6), 98 Stat 2030.

In 1984, as part of a larger bill, Congress enacted two statutes that altered the penalty schemes for federal drug offenders: the Controlled Substances Penalties Amendments Act, Pub L 98-473, Tit II, ch V, 98 Stat 2068, and the Sentencing Reform Act, Pub L 98-473, Tit II, ch II, 98 Stat

1987.[2] The Controlled Substances Penalties Amendments Act increased the maximum prison terms available under the Controlled Substances Act for offenses involving large quantities of narcotic substances to 20 years, but did not provide any term of special parole for such offenses. 21 USC § 841(b)(1)(A) (1982 ed, Supp II) [21 USCS § 841(b)(1)(A)].[3] Persons convicted of crimes involving lesser amounts of narcotic and nonnarcotic substances remained subject to the penalties applicable to offenses committed before the 1984 amendments, including special parole. §§ 841(b)(1)(B) and (C). Thus, while increasing the maximum terms of imprisonment for large-scale narcotics offenses, the 1984 amendments created a peculiar situation in which small-time offenders were subject to special parole, while big-time offenders were not.

Concurrent with the increases in maximum penalties for large-scale narcotics offenses, the Sentencing Reform Act of 1984 modified the penalty scheme for federal drug offenders by deleting all remaining references to special parole in the pre-1984 version of the Controlled Substances Act, but this modification did not become effective until November 1, 1987.[4] The change reflected Congress' desire to eliminate most forms of parole and to replace them with the new system of supervised release. Under the Sentencing Reform

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[1] The Controlled Substances Act established five "schedules" of narcotic and nonnarcotic substances subject to federal drug laws, codified at 21 USC § 812 [21 USCS § 812]. Prior to 1984, 21 USC § 841(b)(1)(A) [21 USCS § 841(b)(1)(A)] applied to offenses involving narcotics listed in schedules I and II, those considered by Congress to present the highest potential for abuse. See 21 USC §§ 812(b)(1) and (b)(2) (1982 ed) [21 USCS §§ 812(b)(1) and (b)(2)]. Persons convicted of offenses involving other illicit drugs were subject to various, lesser penalties. See 21 USC § 841(b)(1)(B), (b)(2) and (b)(3) (1982 ed) [21 USCS §§ 841(b)(1)(B), (b)(2) and (b)(3)].

[2] Both statutes were enacted as part of the Comprehensive Crime Control Act of 1984, Pub L 98-473, Tit II, 98 Stat 1976, a lengthy piece of legislation that brought about significant revisions to many other aspects of the federal criminal justice system including forfeiture, bail, and procedures for the treatment of juvenile and mentally ill defendants.

[3] Large-scale drug offenses under the Controlled Substances Penalties Amendments Act included those involving 100 grams or more of heroin, one kilogram or more of cocaine, and 5 grams or more of LSD. See 21 USC § 841(b)(1)(A) (1982 ed, Supp II) [21 USCS § 841(b)(1)(A)].

Act's provisions for supervised release, the sentencing court, rather than the Parole Commission, would oversee the defendant's postconfinement monitoring. See 18 USC §§ 3583, 3601 [18 USCS §§ 3583, 3601]. The court could terminate, extend, or alter the conditions of the term of supervised release prior to its expiration. § 3583(e). In the event of a violation of the supervised release order, the court could hold a defendant in contempt. § 3583(e)(3).

Having decided upon supervised release as its preferred means of postconfinement monitoring, Congress nevertheless decided to defer its application to drug offenses. Although the Sentencing Reform Act established conditions for supervised release, and although the Act took the further step of eliminating references to special parole for most drug offenses, Congress did not take the final step of requiring supervised release for persons sentenced under the Controlled Substances Act. That step was taken two years later, when Congress enacted the ADAA, Pub L 99-570, 100 Stat 3207, 3207-2 to 3207-4.

The ADAA again redefined and expanded the offense categories codified in 21 USC § 841(b) [21 USCS § 841(b)] and, in so doing, increased the maximum penalties and set minimum penalties for many offenders. ADAA § 1002 created a new drug penalty classification for large-scale offenses involving certain narcotics, such as petitioner's trafficking in more than one kilogram of heroin. For first-time offenders in these high-volume narcotics crimes, Congress authorized sentences of 10 years to life imprisonment. 21 USC § 841(b)(1)(A) (1982 ed, Supp IV) [21 USCS § 841(b)(1)(A)].[5] For midrange violations, such as those involving between 100 grams and one kilogram of heroin, Congress authorized sentences of between 5 and 40 years'

imprisonment. § 841(b)(1)(B).[6] Other violations involving schedule I or II substances were subject to a maximum of 20 years' imprisonment. § 841(b)(1)(C). The penalties for other drug offenses remained mostly unchanged, including mandatory special parole for offenses involving relatively small amounts of marijuana and hashish. See §§ 841(b)(1)(D), (b)(2) and (b)(3).

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[4] As enacted, the Sentencing Reform Act provided that the elimination of special parole terms would take place on November 1, 1986. The effective date of these amendments, however, with many of the Sentencing Reform Act's other key provisions, was delayed until November 1, 1987. See Sentencing Reform Amendments Act of 1985, Pub L 99-217, § 4, 99 Stat 1728.

[5] ADAA § 1002 prescribed equivalent thresholds for "mixture[s] or substance[s] containing a detectable amount" of other illicit narcotics at 5 kilograms for cocaine, 50 grams for cocaine base, 100 grams for phencyclidine (PCP), 10 grams for lysergic acid diethylamide (LSD), 400 grams for propanamide, and 1,000 kilograms for marijuana. See § 841(b)(1)(A).

[6] The equivalent thresholds under ADAA § 1002 for other mixtures or substances were 500 grams for cocaine, 5 grams for cocaine base, 100 grams for PCP (10 grams if pure), 1 gram for LSD, 40 grams for propanamide, and 100 kilograms for marijuana. See § 841(b)(1)(B).

The House and Senate versions of the ADAA, in their original forms, also required that special parole terms be imposed as part of the package of penalties for major narcotics offenses under §§ 841(b)(1)(A), (B), and (C). See HR 5484, 99th Cong, 2d Sess (1986); S 2878, 99th Cong, 2d Sess (1986). Under both bills, the special parole provisions were to become effective immediately and to apply until the effective date of the new federal sentencing system, November 1, 1987. As of that date, the House bill provided for the repeal of the special parole provisions, while the Senate bill provided that all references to special parole be changed to supervised release. See HR Rep No. 99-845, p 20 (1986); 132 Cong Rec 22894 (1986) (§ 608(b) of House bill); id., at 26101 (§ 1007 of Senate bill). Neither of these alternatives was adopted, however. Instead, in the final stages of the legislative process, and without explanation, Congress substituted the words "supervised release" for the words "special parole" whenever the latter term appeared in § 1002. See id., at 32728-32745. As enacted by Congress, § 1002 of the ADAA, 21 USC § 841(b)(1)(A) (1982 ed, Supp IV) [21 USCS § 841(b)(1)(A)], provides in relevant part:

> "Any sentence under this subparagraph shall, in the absence of . . . a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was . . . a prior conviction,
> [498 US 403]
> impose a term of supervised release of at least 10 years in addition to such term of imprisonment. . . . No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein."

In similarly worded passages, Congress also required sentencing courts to impose supervised release terms of at least four and three years for first-time offenders sentenced under §§ 841(b)(1)(B) and (C), respectively, and to double those terms for repeat offenders. In contrast to other sections in the ADAA for which Congress specified November 1, 1987, as the effective date, ADAA § 1002 gave no such direction.

B

The absence of an express deferral of ADAA § 1002's effective date, coupled with the delayed effective date of the Sentencing Reform Act's provisions governing supervised release, has created a conflict of interpretation among the Courts of Appeals. The persons affected by the interpretive problem are those whose offenses occurred between October 27, 1986, the date on which ADAA was signed into law, and November 1, 1987, the effective date of the Sentencing Reform Act's provisions for supervised release. A majority of the Courts of Appeals hold, as did the District Court in this case, that sentencing courts may not impose supervised release for crimes committed before November 1, 1987, and instead require imposition of terms of special parole.[7] The Third Circuit, in reversing the District Court below, held that supervised release applies to offenses that occurred after

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[7] See, Mercado v United States, 898 F2d 291 (CA2 1990) (per curiam); United States v Whitehead, 849 F2d 849, 860 (CA4), cert denied, 488 US 983, 102 L Ed 2d 566, 109 S Ct 534 (1988); United States v Byrd, 837 F2d 179, 181, n 8 (CA5 1988); United States v Paiz, 905

[498 US 404]

October 27, 1986, and four other Circuits accept its position, at least in part.[8] In this Court, the Government now supports the Third Circuit's view, while petitioner still insists that Congress intended no form of postconfinement supervision for offenses committed before November 1, 1987. We now consider which of these interpretations accords with congressional intent.

III

A

[1b, 2, 3] It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment. See Robertson v Bradbury, 132 US 491, 493, 33 L Ed 405, 10 S Ct 158 (1889); Arnold v United States, 9 Cranch 104, 119-120, 3 L Ed 671 (1815); see also 2 N. Singer, Sutherland on Statutory Construction § 33.06, p 12 (C. Sands 4th rev ed 1986). We find no such contrary direction in the language of § 1002 or in its evident purpose. Turning first to the text of the statute, we note that § 1002, like many other congressional enactments, contains no provision for its effective date. Nor is there an effective date specified for the ADAA as a whole. Congress' silence in this regard contrasts with the express effective date provisions for other discrete sections of the ADAA. See Pub L 99-570, §§ 1004(b), 1006(a)(4), 1007(b), and 1009(b). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Russello v United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct 296 (1983)

[498 US 405]

(internal quotations omitted); see General Motors Corp. v United States, 496 US 530, 541, 110 L Ed 2d 480, 110 S Ct 2528 (1990).

[1c] Nor does anything we can discern about Congress' purpose in enacting § 1002 rebut the presumption that it became effective at once. As discussed above, the Controlled Substances Penalties Amendments Act of 1984 inexplicably mandated postconfinement supervision for many small-time drug offenders, but exempted big-time narcotics offenders. See supra, at 400, 112 L Ed 2d, at 927. Section 1002 removed that disparity and mandated postconfinement supervision for all Schedule I and II drug offenders. Given the apparent purpose of the legislation to rectify an earlier mistake, it seems unlikely that Congress intended the effective date to be any time other than the date of enactment.

F2d 1014, 1031 (CA7 1990); United States v Portillo, 863 F2d 25, 26 (CA8 1988) (per curiam); United States v Levario, 877 F2d 1483, 1487-1489 (CA10 1989); United States v Smith, 840 F2d 886, 889-890 (CA11), cert denied, 488 US 859, 102 L Ed 2d 125, 109 S Ct 154 (1988).

[8] See United States v Brundage, 284 US App DC 219, 225, 903 F2d 837, 843 (1990); United States v Figueroa, 898 F2d 825, 828 (CA1 1990); United States v Blackmon, 914 F2d 786, 789-790 (CA6 1990); United States v Torres, 880 F2d 113 (CA9 1989) (per curiam), cert denied, 493 US 1060, 107 L Ed 2d 956, 110 S Ct 873 (1990); cf. United States v Ferryman, 897 F2d 584 (CA1 1990) (persons sentenced under 21 USC § 841(b)(1)(B) [21 USCS § 841(b)(1)(B)] should receive special parole for offenses committed prior to November 1, 1987).

Petitioner asks us to look to other provisions in the ADAA to find Congress' intent. He first contends that Congress must have intended to postpone all the penalty provisions of § 1002—not just its supervised release provisions—until November 1, 1987, because to have done otherwise would have created anomalies with §§ 1007(a) and 1009(a). These sections, each specifying an effective date of November 1, 1987, authorize shorter sentences for certain offenders who cooperate with the Government. According to petitioner, if § 1002 became effective upon enactment, there would have been no possibility of sentences below the mandatory minimum for offenses committed during the period between October 27, 1986, and November 1, 1987, even though an offender otherwise would have been qualified for the exception.

[1d, 4] Petitioner's argument has been rejected by every Court of Appeals to consider it,[9] and we likewise reject it here.

[498 US 406]

While petitioner is correct that § 1002 created minor anomalies with § 1007 and 1009, Congress recognized these potential problems and fixed them. In December 1987, Congress enacted legislation ensuring that the provisions permitting departures from mandatory minimum sentences for cooperating defendants would apply to offenses committed before November 1, 1987. See Sentencing Act of 1987, Pub L 100-182, § 24, 101 Stat 1271. This corrective statute can be explained only if Congress believed that the mandatory minimum penalties had gone into effect as of the ADAA's date of enactment, October 27, 1986. "Of course, the view of a later Congress does not establish definitively the meaning of an earlier enactment, but it does have persuasive value." Bell v New Jersey, 461 US 773, 784, 76 L Ed 2d 312, 103 S Ct 2187 (1983). We believe that Congress' later enactment weighs against petitioner's favored reading of the statute.

[1e, 5] Petitioner next argues that, even if ADAA § 1002 generally became effective on its date of enactment, we should read the delayed effective date provision in ADAA § 1004 as delaying the effective date of the supervised release provisions in ADAA § 1002 as well. ADAA § 1004(b) provides that all remaining references to "special parole" in the Controlled Substances Act were to be changed to "supervised release," but that the amendments made by "this section" were not to take effect until November 1, 1987. By its plain meaning, "this section" refers not to the entire ADAA, nor even to one title or chapter in that enactment. Rather, it refers only to the general changeover provision in § 1004, which was intended to amend those provisions in the Controlled Substances Act that retained the term "special parole" as of November 1,

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[9] See United States v Brundage, supra, at 223, 903 F2d, at 841; United States v Charleus, 871 F2d 265, 269 (CA2 1989); United States v Levy, 865 F2d 551, 559, n 4 (CA3 1989); United States v Duprey, 895 F2d 303, 311 (CA7 1989), cert denied, 495 US 906, 109 L Ed 2d 291, 110 S Ct 1927 (1990); United States v Padilla, 869 F2d 372, 381-382 (CA8), cert denied sub nom Percheitte v United States, 492 US 909, 106 L Ed 2d 572, 109 S Ct 3223 (1989); United States v Meyers, 847 F2d 1408, 1415 (CA9 1988); United States v Garcia, 879 F2d 803, 804 (CA10 1989).

1987.[10] Because § 1002 made the change from special parole to supervised release independent of § 1004, the ADAA's

[498 US 407]

general changeover provision, including that section's delayed effective date, does not apply here. A specific provision controls one of more general application. Crawford Fitting Co. v J. T. Gibbons, Inc. 482 US 437, 445, 96 L Ed 2d 385, 107 S Ct 2494 (1987).

[1f, 6] We doubt, moreover, that Congress would intend to delay § 1002's provisions for supervised release and make its other provisions effective at once. "In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." Crandon v United States, 494 US 152, 158, 108 L Ed 2d 132, 110 S Ct 997 (1990). Section 1002 grouped the ADAA's penalty provisions—imprisonment, fines, and supervised release—into a single paragraph for each of the new offense levels established in 21 USC § 841(b)(1) (1982 ed, Supp IV) [21 USCS § 841(b)(1)]. It is unlikely that the third part of the three-part penalty scheme was postponed for a year while the first two took effect at once. Based on our review of the ADAA, we cannot say that Congress gave a clear direction to delay the effective date of § 1002's supervised release provisions.

B

[1g, 7] Having reviewed the language and structure of the ADAA itself, we now consider the effect of the Sentencing Reform Act's provisions for imposing and revoking supervised release. Petitioner argues that because these provisions did not become effective until November 1, 1987, the term "supervised release" as used in the ADAA had no significance before that date, and courts had no power to impose it. We do not agree. Supervised release is a unique method of post-confinement supervision invented by the Congress for a series of sentencing reforms, including those for drug offenders. The power, and the duty, to impose supervised release is explicit in the ADAA itself as enacted in 1986. While the definition of the term "supervised release" is not set forth in the ADAA, it was set forth in the enacted, though not yet effective, Sentencing Reform Act as early as 1984. It is not

[498 US 408]

uncommon to refer to other, related legislative enactments when interpreting specialized statutory terms. See, e.g., Oscar Mayer & Co. v Evans, 441 US 750, 756, 60 L Ed 2d 609, 99 S Ct 2066 (1979); Kokoszka v Belford, 417 US 642, 650, 41 L Ed 2d 374, 94 S Ct 2431 (1974); Northcross v Memphis Bd. of Education, 412 US 427, 428, 37 L Ed 2d 48, 93 S Ct 2201 (1973). That the Act referred to has its own, later effective date does not defeat the utility of this interpretational device. Courts may refer to enacted, but not yet effective, legislation to interpret statutory terms if the legislature intends the reference. At the time the ADAA was enacted, the Sentencing Reform Act, though its own scheme was not yet operational, had all the weight and dignity of a deliberate, considered enactment of the Congress, presented to, and approved by, the President. The Sentencing Reform Act was the origin of the specialized term "supervised release," and the ADAA used the term in legislating upon the same subject matter. The reasonable assumption is that when Congress adopted the ADAA and used the term "supervised release," it knew of the full definition in the existing Sentencing Reform Act and legislated with reference to it. See Morissette v United States, 342 US 246, 263, 96 L Ed 288, 72 S Ct 240 (1952).

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[10] These sections were 21 USC §§ 841(b)(1)(D), 841(b)(2), 845(a), 845(b), 845a(a), 960(b)(4), and 962(a) (1982 ed, Supp IV) [21 USCS §§ 841(b)(1)(D), 841(b)(2), 845(a), 845(b), 845a(a), 960(b)(4), and 962(a)].

[1h] Further, there is a plausible explanation for the disjunction in the statutes. The class of offenders here involved are those who committed drug offenses between October 27, 1986, and November 1, 1987. In the great majority of those cases, including the case now under review, it was not likely that an offender would be released from custody before the November 1, 1987 date. The draftsman might well have concluded that in all such cases the Sentencing Reform Act would be effective at the time the district court would begin to exercise its duties under the supervised release procedures. See Slawsky, Looking at the Law, 52 Fed Probation 86 (June 1988).

[1i] In reaching this conclusion, we also reject the holdings of the District Court and some Courts of Appeals that, because the statutory provision for imposing and revoking supervised

release did not go into effect until November 1, 1987, the rules governing special parole should apply to crimes committed in the interim period before that date. The plain language of § 1002 forecloses such a result. See Hallstrom v Tillamook County, 493 US 20, 25-26, 107 L Ed 2d 237, 110 S Ct 304 (1990). Admittedly, the statutory scheme might have appeared more logical had Congress not made the last minute switch from special parole to supervised release.[11] That, however, does not justify ignoring Congress' mandate. The term "supervised release" has specific meaning, and we have no reason to doubt that Congress used the term knowing that it differs from the term "special parole," and with the intent that sentencing courts follow the direction of the statute. We hold that for offenses committed in the interim period between October 27, 1986, and November 1, 1987, supervised release applies for all drug offenses in the categories specified by ADAA § 1002.

C

[8] Finally, petitioner invokes the "rule of lenity," contending that the absence of an effective date provision in ADAA § 1002 creates an ambiguity that must be construed in his

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[11] **[1j]** For example, petitioner contends that Congress' last-minute switch from special parole to supervised release created inconsistencies with other penalty provisions in the Controlled Substances Act, specifically 21 USC § 845 [21 USCS § 845], which prohibits distribution of drugs to minors, and 21 USC § 845a [21 USCS § 845a], which prohibits the distribution of drugs within 1,000 feet of a school. For offenses committed prior to November 1, 1987, §§ 845(a) and 845a(a) provide special parole terms in multiples of those authorized by § 841(b)(1) for the same type and quantity of drug. Petitioner notes that if defendants charged with crimes committed between October 27, 1986, and November 1, 1987, are to receive terms of supervised release, not special parole, the enhancement provisions in §§ 845(a) and 845a(a) might not apply. Assuming without deciding that petitioner is correct, these minor inconsistencies nevertheless are not sufficient to overcome the strong presumption in favor of October 27, 1986, being the effective date for § 1002. Congress' possible lack of attention to some of the collateral effects of the change from special parole to supervised release does not justify our disregard of the change itself.

favor. See Bifulco v United States, 447 US, at 387, 65 L Ed 2d 205, 100 S Ct 2247; Lewis v United States, 445 US 55, 65, 63 L Ed 2d 198, 100 S Ct 915 (1980). We do not believe, however, that the rule of lenity applies here. "The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." Callanan v United States, 364 US 587, 596, 5 L Ed 2d 312, 81 S Ct 321 (1961). Applying well-established principles of statutory construction, we have concluded that Congress, through its use of plain language, intended narcotics offenders to receive supervised release for crimes committed between October 27, 1986, and November 1, 1987. While § 1002 may have created some minor inconsistencies with other statutory provisions, its provisions for postconfinement supervision are not ambiguous. This case involves no ambiguity for the rule of lenity to resolve.

For the reasons set forth above, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JAMES A. FORD, Petitioner
v
GEORGIA

498 US 411, 112 L Ed 2d 935, 111 S Ct 850

[No. 87-6796]

Argued November 6, 1990. Decided February 19, 1991.

Decision: Georgia's contemporaneous objection rule held not adequate and independent state ground barring federal review of claim under Batson v Kentucky regarding trial which preceded announcement of rule.

SUMMARY

A black man who had been indicted for the kidnapping, rape, and murder of a white woman filed a pretrial motion in a Georgia trial court to prohibit the prosecution from using its peremptory challenges to exclude blacks from the trial jury, as the defendant alleged that the local prosecutor had a longstanding practice of excluding blacks from juries where the issues to be tried involved whites. The motion was denied, and the prosecution subsequently used 9 of its 10 peremptory challenges to strike black prospective jurors, leaving one black on the jury. After the defendant's 1984 trial, which resulted in his being convicted and sentenced to death, his counsel unsuccessfully moved for a new trial on the ground, among others, that the defendant's right to an impartial trial as guaranteed by the Federal Constitution's Sixth Amendment had been violated by the prosecution's use of peremptory challenges on a racial basis. In affirming the conviction and sentence, the Supreme Court of Georgia rejected the defendant's claim that he had been denied his right to a jury comprised of a fair cross section of the community, as the court found that the defendant had failed to prove the systematic exclusion of black jurors (255 Ga 81, 335 SE2d 567). On certiorari, the United States Supreme Court vacated the decision of the Georgia Supreme Court and remanded the case for reconsideration in the light of Griffith v Kentucky (1987) 479 US 314, 93 L Ed 2d 649, 107 S Ct 708, which had held that the rule of Batson v Kentucky (1986) 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712—allowing a black criminal defendant to make a prima facie case of a violation of the equal protection clause of the Constitu-

Briefs of Counsel, p 1272, infra.

tion's Fourteenth Amendment with evidence that the prosecutor had used peremptory challenges to strike blacks from the jury trying that defendant —was retroactively applicable to cases, such as the one at hand, which had been pending on direct review when the Batson case was decided (479 US 1075, 94 L Ed 2d 129, 107 S Ct 1268). On remand, the Supreme Court of Georgia, in reaffirming the defendant's conviction and sentence, (1) interpreted Griffith v Kentucky as requiring objections made at trial to be resolved under the Batson rule, and not as warranting the extension of relief upon grounds never raised at trial; (2) cited a 1987 decision in which it had prospectively ruled that Batson claims must be raised before the jurors selected to try a case are sworn; (3) held, pursuant to that rule, that the defendant had not made a timely objection to the composition of the jury, as his pretrial motion had objected not to the jury as selected, but to an alleged pattern of excluding black jurors; and (4) determined that the contemporaneous objection rule was a valid state procedural bar to the defendant's Batson complaint (257 Ga 661, 362 SE2d 764).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Souter, J., expressing the unanimous view of the court, it was held that (1) the defendant's pretrial motion had presented the trial court with a cognizable claim subject to proof under the rule of Batson v Kentucky, even though the motion had made no mention of the equal protection clause, because (a) the allegation that the prosecution had engaged in a pattern of excluding blacks from juries over a long period of time could reasonably have been intended and interpreted as raising an equal protection claim under the pre-Batson evidentiary theory articulated in Swain v Alabama (1965) 380 US 202, 13 L Ed 2d 759, 85 S Ct 824, and (b) since Batson did not change the nature of the violation recognized in Swain, but only the quantum of proof required to substantiate a claim, a defendant raising a claim under Swain necessarily states an equal protection violation subject to proof under the Batson standard; and (2) although the state court's requirement that Batson claims be raised in the period between the selection of the jurors and the administration of their oath is sensible, that requirement could not be applied as an adequate and independent state procedural bar preventing federal judicial review of the defendant's equal protection claim, because that requirement had not been firmly established and regularly followed at the time of the defendant's trial.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21A Am Jur 2d, Criminal Law § 684; 32A Am Jur 2d, Federal Practice and Procedure §§ 670-675, 678; 47 Am Jur 2d, Jury §§ 173-176, 235

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review §§ 3:93-3:98, 3:101; 9 Federal Procedure, L Ed, Criminal Procedure § 22:799

7 Federal Procedural Forms, L Ed, Criminal Procedure § 20:833

8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 334

9 Am Jur Proof of Facts 2d 407, Discrimination in Jury Selection—Systematic Exclusion or Underrepresentation of Identifiable Group

30 Am Jur Trials 561, Jury Selection and Voir Dire in Criminal Cases

USCS, Constitution, Amendment 14

L Ed Digest, Appeal §§ 427, 489; Civil Rights § 8; Jury § 44

L Ed Index, Contemporaneous Acts or Matters; Equal Protection; Independent and Adequate State Grounds; Jury and Jury Trial

Index to Annotations, Appeal and Error; Equal Protection of Law; Jury and Jury Trial; Peremptory Challenges

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Supreme Court's views as to use of peremptory challenges to exclude from jury persons belonging to same race as criminal defendant. 90 L Ed 2d 1078.

Group or class discrimination in selection of grand or petit jury as prohibited by Federal Constitution—Supreme Court cases. 33 L Ed 2d 783.

Noncompliance with state procedural rule as constituting "adequate state ground" for denial of relief so as to preclude Supreme Court review of federal question. 24 L Ed 2d 837.

Use of peremptory challenge to exclude from jury persons belonging to a class or race. 79 ALR3d 14.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Civil Rights § 8; Jury § 44 — racial exclusion from jury — peremptory challenges — sufficiency of claim

1a-1e. A 1984 pretrial motion by a black defendant accused of kidnapping, raping, and murdering a white woman—which motion (1) alleged that the local prosecutor had a longstanding practice of excluding blacks from juries where the issues to be tried involved whites, and (2) sought to prohibit the prosecution from using its peremptory challenges to exclude blacks from the trial jury—presented the state trial court with a cognizable claim, subject to proof under the rule of Batson v Kentucky (1986) 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712, that the prosecution's exercise of its peremptory challenges rested on the impermissible ground of race in violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment, even though the motion made no mention of the equal protection clause, where a petition for certiorari by the defendant was pending at the time Batson v Kentucky was decided, because (1) the motion's allegation that the prosecution had engaged in a pattern of excluding blacks from juries could reasonably have been intended and interpreted as raising an equal protection claim under the pre-Batson evidentiary theory articulated in Swain v Alabama (1965) 380 US 202, 13 L Ed 2d 759, 85 S Ct 824, which required proof of such a pattern to overcome the assumption that peremptory challenges to black jurors in a particular case are based on acceptable considerations related to that case—an interpretation of the motion which was adopted by (a) the prosecutor, who cited Swain v Alabama in opposing the motion, (b) the state courts, which treated the motion as a Swain claim, and (c) the state's argument before the United States Supreme Court, which argument conceded that the motion properly raised a Swain claim—and (2) since Batson v Kentucky did not change the nature of the violation recognized in Swain v Alabama, but only the quantum of proof required to substantiate a claim, a defendant raising a claim under Swain necessarily states an equal protection violation subject to proof under the Batson standard; the defendant's motion cannot be interpreted as not stating a sufficiently specific objection to the selection of the jury in his own case to raise a Swain or Batson claim, any more than Swain v Alabama can be read as not requiring proof of discrimination in the selection of an objecting defendant's own jury.

Appeal §§ 427, 487, 489 — review of state court decisions — adequate state grounds — equal protection — timeliness of objection

2a-2e. Although a state court's requirement that any claim under Batson v Kentucky (1986) 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712—which decision allowed a black criminal defendant to make a prima facie case of a violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment with evidence that the prosecutor had used peremptory challenges to strike blacks from the jury trying that defendant—must be raised by a defendant in the period between the selection of the jurors and the administration of their oaths, is a sensible rule, that rule cannot bar federal judicial review of a Batson claim in the case of a black defendant who, prior to his state criminal trial, had moved for an order prohibiting the prosecutor from using peremptory challenges to exclude blacks from the jury, where (1) the state court decision announcing that rule had been decided more than 2 years after the defendant filed his motion and had treated the rule as applying prospectively only, and thus (2) the application of that state court decision to the defendant's case does not satisfy the requirement that an adequate and independent state procedural bar to the entertainment of constitutional claims must have been firmly established and regularly followed by the time as of which it is to be applied; since the contemporaneous objection rule was not firmly established at the time in question, there is no need to dwell on the further point that the state court's inconsistent application of the rule in the present case and in the case where the rule was announced would also fail the requirement that the state practice urged as a bar to federal review must have been regularly followed.

Appeal § 1286 — presumption — objection to jury selection

3a, 3b. Because the supposed renewal, at the time of jury selection, of a black criminal defendant's pretrial motion in the state trial court alleging the prosecution's use of racially discriminatory peremptory challenges, is not a fact necessary to the United States Supreme Court's decision, on certiorari, that the pretrial motion had properly stated a claim under the equal protection clause of the Federal Constitution's Fourteenth Amendment and that a state court rule regarding the timeliness of such a motion could not bar federal review of the constitutional issue, the Supreme Court will assume for purposes of discussion that the defendant did not press the motion again.

Appeal §§ 1123, 1160; Civil Rights § 8 — constitutional issue not raised below — racial exclusion from jury

4. Under Georgia law, the Supreme Court of Georgia will review a constitutional claim on the merits only if the record is clear that the claim was directly and properly made in the court below and distinctly passed upon by the trial judge; therefore, the fact that the Georgia Supreme Court—in considering a black criminal defendant's appeal from his conviction and sentence for allegedly kidnapping, raping, and murdering a white woman —reviews on the merits the defendant's claim, raised in a pretrial motion to the state trial court, that the prosecutor had violated the equal protection clause of the Federal Constitution's Fourteenth Amendment by systematically using peremptory challenges to exclude blacks from juries where the issues to be tried involved members of the opposite race, presupposes the timeliness of the claim.

Appeal § 1286 — presumption — jury selection

5. In reviewing on certiorari a state appellate court's decision that a black criminal defendant's pretrial motion in a state trial court—which motion sought to prohibit the prosecutor from using peremptory challenges in a racially discriminatory manner and was treated as stating a

claim under the equal protection clause of the Federal Constitution's Fourteenth Amendment—was barred as untimely under a state court precedent, the United States Supreme Court will assume that the state appellate court's observations that the defendant had made no contemporaneous objection to the composition of the jury as selected and had made no objection to the composition of the jury after it was selected and before the trial commenced announced no new refinement of the pertinent state precedent—which stated that such equal protection claims should be raised prior to the time that the jurors selected to try the case were sworn, but did not clearly set a time before which such a claim would be premature—but merely reflected the better reading of that precedent as originally written.

Courts § 539 — timeliness of claim — application of local rules

6. It is appropriate to look to local rules for the law governing the timeliness of a claim under the Federal Constitution.

Appeal §§ 489, 1160; Civil Rights § 8; Jury § 44 — racial exclusion from jury — peremptory challenges — timeliness of claim — adequate state grounds

7. A state court may adopt a general rule that a claim under Batson v Kentucky (1986) 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712—which decision allows a black criminal defendant to make a prima facie case of a violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment with evidence that the prosecutor had used peremptory challenges to strike blacks from the jury trying that defendant—is untimely if it is raised for the first time on appeal, or after the jury is sworn, or before the jurors are selected; in any given case, however, the sufficiency of such a rule to limit all review of a constitutional claim depends upon the timely exercise of the local power to set procedure, as novelty in procedural requirements cannot be permitted to thwart review in the United States Supreme Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner Ford, a black man charged with, inter alia, the murder of a white woman, filed a pretrial "Motion to Restrict Racial Use of Peremptory Challenges," alleging that the county prosecutor had "over a long period of time" excluded black persons from juries where the issues to be tried involved members of the opposite race. In opposing the motion, the prosecution referred to Swain v Alabama, 380 US 202, 13 L Ed 2d 759, 85 S Ct 824, in which this Court recognized that the purposeful exclusion of members of the defendant's race from his petit jury would work a denial of equal protection under the Fourteenth Amendment to the Federal Constitution, but held that the defendant would have to prove a pattern of racial discrimination in prior cases as well as his own to prevail. The trial judge denied the motion, declaring that in "numerous or several" cases he had seen the prosecutor strike prospective white jurors but leave prospective black jurors in trials of black defendants. During jury selection, the prosecution exercised 9 of its 10 peremptory challenges to strike black prospective jurors, leaving 1 black venire member on the jury. After the jury convicted Ford and he was sentenced to death, he moved for a new trial, claiming, among other things, that his Sixth Amendment right to an impartial jury was violated by the prosecutor's racially based exercise of peremptory challenges. The motion was denied, and the Supreme Court of Georgia affirmed the conviction. While Ford's first petition for certiorari was pending in this Court, the Court decided Batson v Kentucky, 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712, which dropped the Swain requirement of proof of prior discrimination by holding it possible for a defendant to make out a prima facie equal protection violation entirely by reference to the prosecution's use of peremptory challenges in the defendant's own case. This Court ultimately vacated Ford's conviction and remanded in light of Griffith v Kentucky, 479 US 314, 93 L Ed 2d 649, 107 S Ct 708, which decided that Batson's new evidentiary standard would apply retroactively in cases such as the present. On remand, the State Supreme Court concluded that before his trial Ford had raised a Swain claim that was decided adversely to him on appeal and could not be reviewed again. The court then suggested that a Batson claim was never raised at trial, but held sua sponte that any equal protection claim that Ford might have was untimely under the rule the court had stated in State v Sparks, 257 Ga 97, 98, 355 SE2d 658, 659, which, as interpreted by the court, requires that a contemporaneous objection to a jury be made under Batson in the period between the jurors' selection and the administration of their oaths. Although Sparks was decided long after Ford's trial, the court regarded the Sparks rule as a "valid state procedural bar" to federal review of Ford's claim under Wainwright v Sykes, 433 US 72, 53 L Ed 2d 594, 97 S Ct 2497.

Held: The Sparks rule is not an adequate and independent state procedural ground that would bar federal judicial review of Ford's Batson claim.

(a) The State Supreme Court erred in concluding that Ford failed to present the trial court with a cognizable Batson equal protection claim. Although Ford's pretrial motion did not mention the Equal Protection Clause, and his new trial motion cited the Sixth Amendment rather than the Fourteenth, the pretrial motion's reference to a pattern of excluding black venire members "over a long period of time" constitutes the assertion of an equal protection claim on the evidentiary theory articulated in Batson's antecedent, Swain. That the Georgia courts, in fact, adopted this interpretation is demonstrated by the prosecutor's citation to Swain in opposing the pretrial motion, by the trial judge's clear implication of Swain in ruling that Ford had failed to prove the systematic exclusion of blacks from petit juries, and by the State Supreme Court's explicit statement on remand that Ford had raised a Swain claim. Because Batson did not change the nature of the violation recognized in Swain, but merely the quantum of proof necessary to substantiate a particular claim, it follows that a defendant alleging a Swain equal protection violation necessarily states such a violation subject to Batson's more lenient burden of proof.

(b) The State Supreme Court erred in concluding that the Sparks contemporaneous objection rule can bar federal consideration of Ford's Batson claim as untimely raised. Although the Sparks rule is a sensible one, its imposition here is nevertheless subject to this Court's standards for assessing the adequacy of independent state procedural bars to the entertainment of federal constitutional claims. These include the requirement, under James v Kentucky, 466 US 341, 348-351, 80 L Ed 2d 346, 104 S Ct 1830, that only a state practice that is "firmly established and regularly followed" at the time at which it is to be applied may be interposed to prevent subsequent review by this Court of such a claim. To apply Sparks retroactively to bar consideration of a claim not raised between the jurors' selection and oaths would apply a rule that was unannounced at the time of Ford's trial and is therefore inadequate to serve as an independent state ground under James. Indeed, Sparks would not, by its own terms, apply here, since that decision declared that its rule would apply only as to cases tried "hereafter."

257 Ga 661, 362 SE2d 764, reversed and remanded.

Souter, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

Charles J. Ogletree, Jr. argued the cause for petitioner.
Paula K. Smith argued the cause for respondent.
Briefs of Counsel, p 1272, infra.

OPINION OF THE COURT

[498 US 413]

Justice **Souter** delivered the opinion of the Court.

[1a, 2a] Petitioner alleges that the State of Georgia applied the impermissible criterion of race to exclude venire members from the petit jury that convicted him. The Supreme Court of Georgia held petitioner's equal protection claim procedurally barred as untimely under Georgia law, and we are now called upon to review the adequacy of the State's procedural rule to bar consideration of the constitutional issue raised. We reverse.

I

In September 1984, a grand jury in Coweta County, Georgia, indicted petitioner James A. Ford, a black man, for the kidnaping, rape, and murder of a white woman.[1] The State notified petitioner of its intent to seek the death penalty and identified the statutory aggravating circumstances it would try to prove.

Before trial, petitioner filed a "Motion to Restrict Racial Use of Peremptory Challenges,"[2] alleging that the prosecutor

[498 US 414]

for Coweta County had "over a long period of time" excluded black persons from juries "where the issues to be tried involved members of the opposite race." The motion stated that petitioner "anticipated" the prosecutor would continue the pattern of racial exclusion in this case because of the different races of the accused and the victim. Petitioner requested an order forbidding the State to use "its peremptory challenges in a racially biased manner that would exclude members of the black race from serving on the Jury." App 3-4.

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[1] The indictment included five counts: murder (count 1); rape (count 2); kidnaping (count 3); armed robbery (count 4); and burglary (count 5).

[2] Petitioner's motion, filed on October 9, 1984, reads:

"Now comes JAMES FORD, the Defendant in the above styled action, and moves the Court to restrict the Prosecution from using its peremptory challenges in a racially biased manner that would exclude members of the black race from serving on the Jury. In support of this Motion, the Defendant shows:

At a pretrial hearing on the motion, petitioner's counsel said that his experience had been, "and the Court is aware[,] that the district attorney and the other assistant district attorneys have a history and a pattern when you have a defendant who is black, of using their per-emptory [sic] challenges to excuse potential jurors who are also black." Petitioner's counsel asked the trial judge to discourage further resort to this alleged practice by requiring "the district attorney, if he does use his peremptory challenges to excuse potential black

jurors, to justify on the record the reason for his excusing them." Any failure of the prosecutor to offer such a justification on the record, petitioner's counsel argued, "would evidence the fact that he is using [his peremptory challenges] in a discriminatory manner." App 10.

The prosecution opposed the motion, denying that petitioner could prove that prosecutors in previous cases had challenged black jurors impermissibly. "[I]n practically every trial we have in this county," the prosecutor observed, "there are always blacks on trial juries, and an all white jury is rare in any county." He directed the judge's attention to this Court's decision in Swain v Alabama, 380 US 202, 13 L Ed 2d 759, 85 S Ct 824 (1965), and argued that under Swain "it would be an unreasonable burden to require an attorney for either side to justify his use of peremptory challenges." App 10-11.

The trial judge responded that on "numerous or several" occasions "I've seen cases in which there are, have been black defendants and the district attorney's office has struck perspective (sic) white jurors and left perspective (sic) black jurors on the jury. . . . I have seen it done and I can't sit here and document them and I have not documented them, but it's been on more than one occasion." The trial judge concluded that he was "taking that [observation] into consideration among other things and denying the motion to restrict racial use of peremptory challenges." Id., at 11-12.

"1.

"The Prosecutor has over a long period of time excluded members of the black race from being allowed to serve on the Jury where the issues to be tried involve members of the opposite race.

"2.

"This case involves a black accused and the victim is a member of the white race.

"3.

"It is anticipated that the Prosecutor will continue his long pattern of racial discrimination in the exercise of his peremptory strikes.

"4.

"The exclusion of members of the black race in the Jury when a black accused is being tried is done in order that the accused will receive excessive punishment if found guilty, or to inject racial prejudice into the fact finding process of the jury. See McCray vs New York, [461 US 961 [77 L Ed 2d 1322, 103 S Ct 2438] (1983)]. Taylor vs Louisana (sic), 419 US 522 [42 L Ed 2d 690, 95 S Ct 692] (1975)." App 3-4.

The trial began 10 days later. Although the jury selection on the first day was not transcribed, it is undisputed that the prosecution exercised 9 of its 10 peremptory challenges to strike black prospective jurors, leaving 1 black venire member seated on the jury. A black potential alternate juror was challenged not by the State but by petitioner.[3]

[498 US 416]

[3a] On the second day of the trial, both petitioner and respondent made their opening statements, after which the State presented eight witnesses before the noon recess. At the start of the afternoon session, the trial judge called a conference in chambers to discuss, among other things, petitioner's prior motion about "the State's using all their strikes to strike blacks from being on the jury."[4] Although the judge noted that the State had not used all of its peremptory challenges to strike black venire members and had left a black person on the jury, petitioner's counsel observed for the record that the State had used 9 of its 10 challenges to strike black venire members. The trial judge concurred: "That's what happened in the jury selection process. I just think that needs to be put in since that motion was made. Of course, the motion has been denied. . . ." The prosecutor asked the court whether he needed to make any showing of the reasons he had exercised the State's challenges. The trial judge answered that he was not asking for any, and none was made. Id., at 15-16.

After the jury had convicted petitioner on all counts and he had been sentenced to death, his counsel moved for a new trial claiming, inter alia, that petitioner's "right to an impartial jury as guaranteed by Sixth Amendment to the United States Constitution was violated by the prosecutor's exercise of his peremptory challenges on a racial basis." Id., at 7-8. The motion was denied.

On appeal, the Supreme Court of Georgia at one point interpreted petitioner's claim as one "that the prosecutor's use of peremptory strikes to remove 9 of 10 possible black jurors denied Ford his right to a jury comprised of a fair cross-section of the community." Although the court thereby

[498 US 417]

referred to the Sixth Amendment concept of a "fair cross-section of the community," see, e. g., Taylor v Louisiana, 419 US 522, 526-533, 42 L Ed 2d 690, 95 S Ct 692 (1975), it also found that petitioner had failed to prove the " 'systematic exclusion of black jurors' " from service, and thus alluded to the standard for establishing an equal protection violation first described in Swain v Alabama, supra. Ford v State, 255 Ga 81, 83, 335 SE2d 567, 572 (1985) (quoting Moore v State, 254 Ga 525, 529, 330 SE2d 717, 721 (1985)). The court found no error and affirmed petitioner's conviction.

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[3] By statute, Georgia allots 20 peremptory challenges to "[e]very person indicted for a crime or offense which may subject him to death or to imprisonment for not less than four years." Ga Code Ann § 15-12-165 (1990). The State is allotted 10 peremptory challenges in such cases. Ibid.

[4] **[3b]** Petitioner and respondent disagree on whether, at the time of jury selection, petitioner renewed his motion alleging the prosecution's use of racially discriminatory peremptory challenges. Its renewal during jury selection is not a fact necessary to our decision, and we therefore assume for purposes of discussion that petitioner did not press the motion again.

Petitioner filed his first petition for certiorari with this Court on January 22, 1986. While it was before us, we held in Batson v Kentucky, 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712 (1986), that a black criminal defendant could make a prima facie case of an equal protection violation with evidence that the prosecutor had used peremptory challenges in that case to strike members of the defendant's race from the jury. Although we soon held in Allen v Hardy, 478 US 255, 92 L Ed 2d 199, 106 S Ct 2878 (1986), that Batson's new evidentiary standard would not be applied retroactively on collateral review of convictions that had reached finality before Batson was announced, we subsequently held in favor of the new standard's retroactive application to all cases pending on direct review or not yet final when Batson was decided. Griffith v Kentucky, 479 US 314, 328, 93 L Ed 2d 649, 107 S Ct 708 (1987). We then granted Ford's petition for certiorari and vacated and remanded for further consideration in light of Griffith. Ford v Georgia, 479 US 1075, 94 L Ed 2d 129, 107 S Ct 1268 (1987).

On remand, the Supreme Court of Georgia held sua sponte, without briefing or arguments from the parties, that petitioner's equal protection claim was procedurally barred. 257 Ga 661, 362 SE2d 764 (1987). The court concluded that before his trial petitioner had raised a Swain claim that was "decided adversely to him on appeal, [and] cannot be reviewed in this proceeding." 257 Ga, at 663, 362 SE2d, at 766. The court then suggested that a Batson claim was "never raised at trial," 257 Ga, at 662, 362 SE2d, at 765

[498 US 418]

(emphasis omitted), but went on to consider whether any such claim raised either in petitioner's pretrial motion or during the chambers conference on the second day of the trial could be treated as timely. The court applied the state procedural rule announced in State v Sparks, 257 Ga 97, 98, 355 SE2d 658, 659 (1987), that a Batson claim must "be raised prior to the time the jurors selected to try the case are sworn." Reading Sparks as requiring a contemporaneous objection to a defendant's jury "after it was selected and before the trial commenced," the court concluded that petitioner had failed to make such an objection, with the result that any Batson claim was barred by a valid state procedural rule. 257 Ga, at 663-664, 362 SE2d, at 766. A dissenting opinion took issue with the court's conclusion that petitioner "never raised a Batson-type claim," and with the court's application of a state procedural rule that had not been announced when petitioner's motion was filed in 1984. Id., at 664, 362 SE2d, at 767.

We granted certiorari to decide whether the rule of procedure laid down by the Supreme Court of Georgia in Sparks was an adequate and independent state procedural ground that would bar review of petitioner's Batson claim. 495 US 903, 109 L Ed 2d 285, 110 S Ct 1921 (1990).

II

A

[1b] The threshold issues are whether and, if so, when petitioner presented the trial court with a cognizable Batson claim that the State's exercise of its peremptory challenges rested on the impermissible ground of race in violation of the Equal Protection Clause of the Fourteenth

Amendment. We think petitioner must be treated as having raised such a claim, although he certainly failed to do it with the clarity that appropriate citations would have promoted. The pretrial motion made no mention of the Equal Protection Clause, and the later motion for a new trial cited the Sixth Amendment, not the Fourteenth.

[498 US 419]

The pretrial motion did allege, however, that the prosecution had engaged in a pattern of excluding black persons from juries "over a long period of time," and petitioner argued to this effect at the hearing on this motion as well as at the hearing on his motion for a new trial. This allegation could reasonably have been intended and interpreted to raise a claim under the Equal Protection Clause on the evidentiary theory articulated in Batson's antecedent, Swain v Alabama, 380 US 202, 13 L Ed 2d 759, 85 S Ct 824 (1965). The Court in Swain recognized that an equal protection violation occurs when the state uses its peremptory challenges for the purpose of excluding members of a black defendant's race from his petit jury, id., at 209, 13 L Ed 2d 759, 85 S Ct 824; Batson v Kentucky, supra, at 90, 90 L Ed 2d 69, 106 S Ct 1712; but Swain also established a rigorous standard for proving such a violation, holding it "permissible to insulate from inquiry the removal of Negroes from a particular jury on the assumption that the prosecutor is acting on acceptable considerations related to the case he is trying . . . ." 380 US, at 223, 13 L Ed 2d 759, 85 S Ct 824. That assumption could not be overcome, and the state required to justify its use of peremptory challenges in a particular case, without proof that the prosecutor, "in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim . . . [, was] responsible for the removal of Negroes who ha[d] been selected as qualified jurors by the jury commissioners and who ha[d] survived challenges for cause, with the result that no Negroes ever serve on petit juries." Id., at 223-224, 13 L Ed 2d 759, 85 S Ct 824.

Our interpretation of petitioner's reference to a pattern of excluding black venire members "over a long period of time" as the assertion of a Swain claim was, in fact, adopted in the Georgia courts. The prosecutor himself cited Swain to the trial court in opposing the pretrial motion; the trial judge clearly implicated Swain in ruling that petitioner had failed to prove the systematic exclusion of blacks from petit juries; and the second opinion of the Supreme Court of Georgia in this case explicitly stated that petitioner had raised a Swain

[498 US 420]

claim, upon the merits of which he had lost on his first appeal. 257 Ga, at 663, 362 SE2d, at 765-766.

The State, indeed, concedes that petitioner properly raised a Swain claim in his pretrial motion, Tr of Oral Arg 40, but in proceeding to argue that the motion was insufficient to raise a claim under Batson, the State assumes a distinction between the holdings in those two cases that does not exist. Both Swain and Batson recognized that a purposeful exclusion of members of the defendant's race from the jury selected to try him would work a denial of equal protection. To prevail on such an equal protection claim under Swain, as just noted, this Court indicated that a defendant must show a pattern of racial discrimination in prior cases as well as in his own. Because the petitioner in Swain had failed to prove purposeful racial discrimination in prior instances of jury selection, we held that he had "not laid the proper predicate for attacking the peremptory strikes as they were used in [his] case." 380 US, at 226, 13 L Ed 2d 759, 85 S Ct 824. Batson dropped the Swain requirement of proof of prior discrimination, holding it possible for a defendant to make out a prima facie equal protection violation entirely by reference to the prosecution's use of peremptory challenges in the circumstances of the defendant's own case. 476 US, at 92-98, 90 L Ed 2d 69, 106 S Ct 1712.

[1c] Because Batson did not change the nature of the violation recognized in Swain, but merely the quantum of proof necessary to substantiate a particular claim, it follows that a defendant alleging a violation of equal protection of the law under Swain necessarily states an equal protection violation subject to proof under the Batson standard of circumstantial evidence as well. Thus, from the determination by the Supreme Court of Georgia that petitioner raised a claim under Swain, it follows that he raised an equal protection claim subject to the more lenient burden of proof laid down in Batson.[5]

[498 US 421]

B

[4] We now face the question whether Georgia can bar consideration of that Batson claim as untimely raised. If we were to focus only on the fact of the state court's conclusion that petitioner had raised a Swain claim, the issue of the Batson claim's timeliness under state law could be resolved with the simplicity of a syllogism. Under Georgia's precedent, its Supreme Court will review a constitutional claim on the merits only if the record is clear that the claim "was directly and *properly* made in the court below and distinctly passed upon by the trial judge." Atlanta v Columbia Pictures Corp. 218 Ga 714, 719, 130 SE2d 490, 494 (1963) (emphasis added). The fact that the court reviewed petitioner's Swain claim on the merits, as noted in the court's second opinion, therefore presupposes the claim's timeliness. Because Batson

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[5] **[1d]** The Supreme Court of Georgia's second opinion includes the statement that petitioner's "pre-trial motion was not an objection to the jury as selected." 257 Ga 661, 663, 362 SE2d 764, 766 (1987). This suggests the possibility that the state court did not read Swain v Alabama, 380 US 202, 13 L Ed 2d 759, 85 S Ct 824 (1965), as requiring an objection to the particular jury selected to try the objecting defendant, and raises the question whether the Supreme Court of Georgia might now hold that petitioner's objection was insufficiently specific to his own jury to raise either a Swain or a Batson v Kentucky, 476 US 79, 90 L Ed 2d 69, 106 S Ct 1712 (1986), claim. We think such a reading of petitioner's motion and the proceedings below would be as impermissible as a reading of Swain without the requirement of proving discrimination in the selection of an objecting defendant's own jury. Swain described a defendant's burden to prove systematic discrimination as a predicate to attacking the use of peremptory challenges in his own case, 380 US, at 226, 13 L Ed 2d 759, 85 S Ct 824, and the anticipation of unconstitutional challenges in his own case was the focus of petitioner's pretrial motion. What petitioner did not, and could not, do by anticipatory objection was allege the exact number of impermissible challenges or any other details of the jury selection that might support an inference of discriminatory purpose. But the State has never argued that the pretrial motion, which correctly anticipated challenges to a substantial proportion of the black venire members, was inadequate for either or both of these reasons. The State has, in fact, conceded that the trial judge was not misled into thinking that petitioner objected to anything other than the use of racially discriminatory peremptory challenges in the selection of the jury in this case. Tr of Oral Arg 31-32.

[498 US 422]

merely modified the allegations and evidence necessary to raise and prove the equal protection claim in question, it would be reasonable to conclude that the state court's concession of timeliness under Swain must govern its treatment of the Batson claim as well.

[2b, 5] The Supreme Court of Georgia, nonetheless, rested its contrary conclusion on the rule announced in State v Sparks, that "hereafter, any claim under Batson should be raised prior to the time the jurors selected to try the case are sworn." 257 Ga, at 98, 355 SE2d, at 659. Although this language clearly sets the time after which a Batson claim would be too late, it did not so clearly set a time before which such a claim would be premature. The second Georgia opinion in this case, however, makes it obvious that the court understood Sparks to require an objection to be raised after the jurors are chosen. Thus, the court noted that petitioner made "no contemporaneous objection to the composition of the jury as selected," 257 Ga, at 663, 362 SE2d, at 766, and "no objection to the composition of the jury after it was selected and before the trial commenced." Id., at 664, 362 SE2d, at 766. We assume that these observations by the court announced no new refinement of Sparks, but merely reflected the better reading of its opinion as originally written. In any event, the Georgia court regarded Sparks as so interpreted to be a "valid state procedural bar" to petitioner's claim, citing our decision in Wainwright v Sykes, 433 US 72, 53 L Ed 2d 594, 97 S Ct 2497 (1977), thus apparently deciding the federal question whether the Sparks procedural rule bars federal review of petitioner's claim.[6]

[2c] The requirement that any Batson claim be raised not only before trial, but in the period between the selection of the jurors and the administration of their oaths, is a sensible rule.

[498 US 423]

The imposition of this rule is nevertheless subject to our standards for assessing the adequacy of independent state procedural grounds to bar all consideration of claims under the national Constitution. A review of these standards reveals the inadequacy of Georgia's rule in Sparks to foreclose consideration of the Batson claim in this case.

[6, 7] The appropriateness in general of looking to local rules for the law governing the timeliness of a constitutional claim is, of course, clear. In Batson itself, for example, we imposed no new procedural rules and declined either "to formulate particular procedures to be followed upon a defendant's timely objection to a prosecutor's challenges," or to decide when an objection must be made to be timely. 476 US, at 99-100, 90 L Ed 2d 69, 106 S Ct 1712. Instead, we recognized that local practices would indicate the proper deadlines in the contexts of the various procedures used to try criminal cases, and we left it to the trial courts, with their wide "variety of jury selection practices," to implement Batson in the first instance. Id., at 99, n 24, 90 L Ed 2d 69, 106 S Ct 1712. Undoubtedly, then, a state court may adopt a general rule that a Batson claim is untimely if it is raised for the first time on appeal, or after the jury is sworn, or before its members are selected.

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[6] We do not read the opinion of the Supreme Court of Georgia as announcing a refusal to entertain the Batson claim in the Georgia courts in the event of our holding that a claim was raised and is open to federal consideration.

In any given case, however, the sufficiency of such a rule to limit all review of a constitutional claim itself depends upon the timely exercise of the local power to set procedure. "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." NAACP v Alabama ex rel. Patterson, 357 US 449, 457-458, 2 L Ed 2d 1488, 78 S Ct 1163 (1958). In the NAACP case, we declined to apply a state procedural rule, even though the rule appeared "in retrospect to form part of a consistent pattern of procedures," because the defendant in that case could not be "deemed to have been apprised of its existence." Id., at 457, 2 L Ed 2d 1488, 78 S Ct 1163. In James v Kentucky, 466 US 341, 80 L Ed 2d 346, 104 S Ct 1830 (1984), we held that only a "firmly established

[498 US 424]

and regularly followed state practice" may be interposed by a State to prevent subsequent review by this Court of a federal constitutional claim. Id., at 348-351, 80 L Ed 2d 346, 104 S Ct 1830; see also Barr v City of Columbia, 378 US 146, 149, 12 L Ed 2d 766, 84 S Ct 1734 (1964) (state procedural rules "not strictly or regularly followed" may not bar our review); NAACP v Alabama ex rel. Flowers, 377 US 288, 297, 12 L Ed 2d 325, 84 S Ct 1302 (1964) (procedural rule no bar to our review when state court had never applied it with the "pointless severity shown here").

[2d] The Supreme Court of Georgia's application of its decision in Sparks to the case before us does not even remotely satisfy the requirement of James that an adequate and independent state procedural bar to the entertainment of constitutional claims must have been "firmly established and regularly followed" by the time as of which it is to be applied. At the time of petitioner's trial, Georgia's procedural law was just what it was when the Sparks defendant was tried, for Sparks was decided more than two years after petitioner in this case filed his motion on the prosecution's use of peremptory challenges and long after petitioner's trial was over. When petitioner filed his pretrial motion, he was subject to the same law that had allowed the defendant in Sparks to object even after the jury had been sworn. The very holding in Sparks was that the defendant was not procedurally barred from raising a Batson claim after the jury had been sworn and given preliminary instructions, and after the trial court had held a lengthy hearing on an unrelated matter. The court entertained the claim as having been raised "relatively promptly" because no prior decision of the Supreme Court of Georgia had required an earlier objection.

To apply Sparks retroactively to bar consideration of a claim not raised between the jurors' selection and oath would therefore apply a rule unannounced at the time of petitioner's trial and consequently inadequate to serve as an independent state ground within the meaning of James. Indeed, the Georgia court itself in Sparks disclaimed any such effect for

[498 US 425]

that decision. It was only as to cases tried *"hereafter*

[that] any claim under Batson should be raised prior to the time the jurors selected to try the case are sworn." 257 Ga, at 98, 355 SE2d, at 659 (emphasis added). This case was not tried "hereafter," and the rule announced prospectively in Sparks would not, even by its own terms, apply to petitioner's case. Since the rule was not firmly established at the time in question, there is no need to dwell on the further point that the state court's inconsistent application of the rule in petitioner's case and Sparks would also fail the second James requirement that the state practice have been regularly followed.[7]

III

[1e, 2e] The Supreme Court of Georgia erred both in concluding that petitioner's allegation of an equal protection violation under Swain failed to raise a Batson claim, and in apparently relying on Wainwright v Sykes, 433 US 72, 53 L Ed 2d 594, 97 S Ct 2497 (1977). The Sparks rule, adopted long after petitioner's trial, cannot bar federal judicial review of petitioner's equal protection claim. The judgment below is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[7] The defendant in State v Sparks, 257 Ga 97, 355 SE2d 658 (1987), was in an even less compelling posture than petitioner in this case because the Sparks defendant did not raise his claim before trial as did petitioner here. Thus, petitioner asserted his objection more promptly than the defendant in Sparks at a time when there was no special rule in Georgia on when a Batson-type claim must be raised.

[498 US 426]

FREEPORT-McMoRAN INC., et al., Petitioners

v

K N ENERGY, INC.

498 US 426, 112 L Ed 2d 951, 111 S Ct 858

[No. 90-655]

Decided February 19, 1991.

Decision: Addition of nondiverse limited partnership as party after filing of suit in Federal District Court held not to defeat diversity jurisdiction where original parties were diverse.

SUMMARY

A subsidiary company and its parent filed suit in the United States District Court for the District of Colorado against another company for breach of contract. The plaintiffs asserted that the District Court had jurisdiction under 28 USCS § 1332(a)(1) by virtue of diversity of citizenship. At all times up to and including the filing of the complaint, both the subsidiary and the parent company were Delaware corporations with their principal places of business in Louisiana, while the defendant was a Kansas corporation with its principal place of business in Colorado. After suit was filed, the subsidiary transferred its interest in the contract in question to a limited partnership, for business reasons unrelated to the litigation. The partnership's limited partners included citizens of Kansas and Colorado. Before trial commenced, the subsidiary and the parent company sought to substitute the partnership as a plaintiff under Rule 25(c) of the Federal Rules of Civil Procedure. The District Court did not remove the subsidiary as a party but permitted the addition of the partnership as a party. After a bench trial, the District Court held in favor of the plaintiffs. The United States Court of Appeals for the Tenth Circuit, reversing on appeal, directed that the suit be dismissed for want of jurisdiction, on the ground that (1) in determining the citizenship of a limited partnership for purposes of 28 USCS § 1332(a)(1), the citizenship of all the members of the entity must be consulted; (2) if a limited partner is a citizen of the same state as a party on the other side of the action, diversity jurisdiction is unavailable to try an otherwise nonfederal claim; and thus (3) the addition of the partnership as

the real party in interest destroyed the District Court's diversity jurisdiction (907 F2d 1022).

Granting certiorari, the United States Supreme Court reversed. In a per curiam opinion expressing the views of the eight participating members of the court, it was held that (1) for purposes of determining whether a Federal District Court has diversity jurisdiction over an action, diversity of citizenship is assessed at the time that the action is filed; (2) diversity jurisdiction, once established, is not defeated by the addition of a nondiverse party to the action; and (3) the addition of the limited partnership as a party did not destroy the District Court's jurisdiction, given that the partnership (a) was not an indispensable party at the time that the complaint was filed, and (b) had no interest in the outcome of the litigation until after suit was commenced.

Souter, J., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

32A Am Jur 2d, Federal Practice and Procedure §§ 1288, 1289, 1416

1 Federal Procedure, L Ed, Access to District Courts §§ 1:192, 1:208, 1:211

1 Federal Procedural Forms, L Ed, Actions in District Court §§ 1:42, 1:43, 1:542, 1:1035, 1:1038, 1:1040, 1:1043

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 35, 36

28 USCS § 1332(a)

L Ed Digest, Courts §§ 349, 362

L Ed Index, Diversity of Citizenship; Limited Partnerships

Index to Annotations, Diversity of Citizenship; Limited Partnerships

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Determination of citizenship of partnership, for purposes of diversity jurisdiction under 28 USCS § 1332(a). 83 ALR Fed 136.

Federal court's jurisdiction as affected by common citizenship of third party defendant with either or both of original parties. 37 ALR2d 1411.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 1677; Courts § 362 — federal diversity jurisdiction — addition of nondiverse party — grant of certiorari — reversal

1a, 1b. A Federal District Court has jurisdiction to entertain an action by virtue of diversity of citizenship, where (1) at all times up to and including the filing of the complaint, the plaintiffs were Delaware corporations with their principal places of business in Louisiana, (2) the defendant was a Kansas corporation with its principal place of business in Colorado, (3) after suit was filed, but before trial commenced, the District Court permitted the plaintiffs to add as a party a limited partnership whose limited partners included citizens of Kansas and Colorado, and (4) the limited partnership (a) was not an indispensable party at the time that the complaint was filed, and (b) had no interest in the outcome of the litigation until sometime after suit was commenced; under such circumstances, the United States Supreme Court will grant a petition for certiorari and reverse the judgment of a United States Court of Appeals which held that the addition of the limited partnership to the action defeated diversity jurisdiction.

Courts §§ 349, 362 — federal diversity jurisdiction — when assessed — addition of nondiverse party

2a, 2b. For purposes of determining whether a Federal District Court has jurisdiction to entertain an action by virtue of diversity of citizenship of the parties, diversity of citizenship is assessed at the time that the action is filed; diversity jurisdiction, once established, is not defeated by the addition of a nondiverse party to the action, since a contrary rule is not required in order to accomplish the purposes of diversity jurisdiction.

OPINION OF THE COURT

[498 US 426]

Per Curiam.

[1a] Petitioners seek review of a decision of the United States Court of Appeals for the Tenth Circuit, holding that a Federal

[498 US 427]

District Court lacked jurisdiction to entertain their diversity action because they added a nondiverse party after filing their complaint. We grant certiorari and reverse the decision of the Court of Appeals.

Petitioners, McMoRan Oil and Gas Company (McMoRan) and its parent company, Freeport-McMoRan Inc. (Freeport), sued respondent K N Energy, Inc. (K N) for breach of contract in the United States District Court for the District of Colorado. Petitioners claimed that respondent had failed to pay the price for natural gas agreed upon in their contract, and sought both declaratory relief to establish the contract price and damages for past underpayments. Petitioners based federal jurisdiction upon diversity of citizenship. At all times up to and including the filing of the complaint, Freeport and McMoRan were Delaware corporations with their principal places of business in Louisiana. K N was and is a Kansas corporation with its principal place of business in Colorado.

After suit was filed, petitioner McMoRan transferred its interest in the contract with respondent to a limited partnership, FMP Operating Company (FMPO), for business reasons unrelated to the instant litigation. FMPO's limited partners included citizens of Kansas and Colorado. Accordingly, before trial commenced, petitioners sought leave to amend their complaint to substitute FMPO as a plaintiff under Rule 25(c) of the Federal Rules of Civil Procedure. The District Court permitted petitioners to add FMPO as a party but did not remove McMoRan as a party. After a bench trial, the District Court held in favor of petitioners, and respondent appealed. The Court of Appeals reversed and directed that the suit be dismissed for want of jurisdiction. The court held that "although complete diversity was present when the complaint was filed," the addition of FMPO as a plaintiff destroyed jurisdiction. 907 F2d 1022, 1024 (1990). The court based its holding upon our decision in Carden v Arkoma Associates, 494 US 185, 108 L Ed 2d 157, 110 S Ct 1015 (1990). The

court explained that "Carden establishes that [FMPO's] addition as the real party in interest destroys the district court's diversity jurisdiction." 907 F2d, at 1025.

[2a] Our decision last Term in Carden considered whether the citizenship of limited partners must be taken into account in determining whether diversity jurisdiction exists in an action brought by a limited partnership. The original plaintiff in Carden was the limited partnership; diversity jurisdiction, then, depended upon whether complete diversity of citizenship existed at the time the action was commenced. But nothing in Carden suggests any change in the well-established rule that diversity of citizenship is assessed at the time the action is filed. We have consistently held that if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events. Mollan v Torrance, 9 Wheat 537, 6 L Ed 154 (1824); Clarke v Mathewson, 12 Pet 164, 171, 9 L Ed 1041 (1838); Wichita Railroad & Light Co. v Public Util. Comm'n of Kansas, 260 US 48, 54, 67 L Ed 124, 43 S Ct 51 (1922) ("Jurisdiction once acquired . . . is not divested by a subsequent change in the citizenship of the parties. Much less is such jurisdiction defeated by the intervention, by leave of the court, of a party whose presence is not essential to a decision of the controversy between the original parties" (citations omitted)).

[1b, 2b] The opinions of the District Court and the Court of Appeals establish that the plaintiffs and defendants were diverse at the time the breach-of-contract action arose and at the time that federal proceedings commenced. The opinions also confirm that FMPO was not an "indispensable" party at the time the complaint was filed; in fact, it had no interest whatsoever in the outcome of the litigation until sometime after suit was commenced. Our cases require no more than this. Diversity jurisdiction, once established, is not defeated by the addition of a nondiverse party to the action. A contrary rule could well have the effect of deterring normal business transactions during the pendency of what might be lengthy litigation.

Such a rule is not in any way required to accomplish the purposes of diversity jurisdiction.

Respondent relies on our decision in Owen Equipment & Erection Co. v Kroger, 437 US 365, 57 L Ed 2d 274, 98 S Ct 2396 (1978), to support the result reached by the Court of Appeals. There we held that the ancillary jurisdiction of a District Court did not extend to the entertaining of a claim by an original plaintiff in a diversity action against a nondiverse third-party defendant impleaded by the original defendant pursuant to Federal Rules of Civil Procedure 14(a). Owen casts no doubt on the principle established by the cases previously cited that diversity jurisdiction is to be assessed at the time the lawsuit is commenced.

The motion of American Mining Congress for leave to file a brief as amicus curiae is granted. The petition for a writ of certiorari is granted, and the judgment of the Court of Appeals is reversed.

Justice **Souter** took no part in the consideration or decision of this motion and case.

[498 US 430]

JOSE M. LOZADA, Petitioner

v

GEORGE DEEDS, Warden

498 US 430, 112 L Ed 2d 956, 111 S Ct 860

[No. 90-5393]

Decided February 19, 1991.

Decision: Denial of certificate of probable cause for appeal of habeas corpus judgment held error where petitioner alleged that counsel failed to inform him of right to appeal state court convictions.

SUMMARY

An accused was convicted in Nevada state court on state drug charges. The accused filed no direct appeal but, after exhausting state postconviction remedies, he filed a habeas corpus petition in the United States District Court for the District of Nevada. The accused contended that he had been deprived of his right to effective assistance of counsel, in that his trial counsel (1) had failed to inform him of his right to appeal, of the procedures and time limitations for an appeal, and of his right to appointed counsel, and (2) had failed to file a notice of appeal or to insure that the accused received appointed counsel on appeal. The petition also implied that the accused had been misled when trial counsel told the accused's sister that the case had been forwarded to the public defender's office. The District Court acknowledged that trial counsel's conduct might have been below federal constitutional standards. However, the District Court, agreeing with a federal magistrate's recommendation, dismissed the petition on the ground that the accused (1) had not indicated what issues he would have raised on appeal, (2) had not demonstrated that the appeal might have succeeded, and therefore (3) had not shown prejudice. Again stating that the accused had failed to show prejudice, the District Court subsequently denied the accused a certificate of probable cause to appeal the denial of habeas corpus relief. The United States Court of Appeals for the Ninth Circuit, in a one-sentence order, also denied a certificate of probable cause.

Granting leave to proceed in forma pauperis and granting certiorari, the

United States Supreme Court reversed and remanded. In a per curiam opinion expressing the view of White, Marshall, Blackmun, Stevens, Scalia, Kennedy, and Souter, JJ., it was held that the Court of Appeals erred in denying the accused a certificate of probable cause, given that (1) the issue of prejudice was presumably the basis for the Court of Appeals' decision to deny the certificate; (2) the issue of prejudice caused by the alleged denial of the right to appeal could be resolved in a manner different from the one followed by the District Court; and (3) thus, under the standards set forth in Barefoot v Estelle (1983) 463 US 880, 77 L Ed 2d 1090, 103 S Ct 3383, for the issuance of a certificate of probable cause, the petitioner made a substantial showing that he had been denied the right to effective assistance of counsel.

Rehnquist, Ch. J., and O'Connor, J., would have denied certiorari.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21A Am Jur 2d, Criminal Law § 751; 39 Am Jur 2d, Habeas Corpus § 174

9 Federal Procedure, L Ed, Criminal Procedure §§ 408, 409; 16 Federal Procedure, L Ed, Habeas Corpus §§ 41:553-41:558

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review §§ 3:413-3:416

5 Am Jur Proof of Facts 2d 267, Ineffective Assistance of Counsel

20 Am Jur Trials 1, Federal Habeas Corpus Practice; 30 Am Jur Trials 607, Defending Against Claim of Ineffective Assistance of Counsel

28 USCS § 2253

L Ed Digest, Appeal § 212

L Ed Index, Appeal and Error; Attorneys at Law; Habeas Corpus

Index to Annotations, Appeal and Error; Attorney or Assistance of Attorney; Habeas Corpus

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ANNOTATION REFERENCES

Supreme Court's views as to accused's federal constitutional right to counsel on appeal. 102 L Ed 2d 1049.

When is attorney's representation of criminal defendant so deficient as to constitute denial of federal constitutional right to effective assistance of counsel—Supreme Court cases. 83 L Ed 2d 1112.

Finality for appeal of federal habeas corpus orders. 82 ALR Fed 937.

Modern status of rule as to test in federal court of effective representation by counsel. 26 ALR Fed 218.

Consequences of prosecution's failure to file timely brief in appeal by accused. 27 ALR4th 213.

Adequacy of defense counsel's representation of criminal client regarding appellate and postconviction remedies. 15 ALR4th 582.

Habeas corpus on ground of deprivation of right to appeal. 19 ALR2d 789.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 212, 910.6, 951, 1677, 1692.3 — habeas corpus — certificate of probable cause — in forma pauperis — grant of certiorari — reversal — remand

1a, 1b. A United States Court of Appeals errs in denying a certificate of probable cause for an appeal of a habeas corpus judgment pursuant to 28 USCS § 2253, where (1) the petitioner, seeking habeas corpus relief in Federal District Court after being convicted in state court, contended that (a) his trial counsel had failed to inform him of his right to appeal his convictions, of the procedures and time limitations for an appeal, and of his right to appointed counsel, (b) trial counsel had failed to file a notice of appeal or to insure that the accused received appointed counsel on appeal, and (c) such conduct constituted ineffective assistance of counsel, (2) the District Court, dismissing the petition and denying a certificate of probable cause, stated that the petitioner had failed to show any prejudice from counsel's alleged errors, because the petitioner had not indicated what issues he would have raised on appeal and had not demonstrated that the appeal might have succeeded, (3) the issue of prejudice was presumably the basis for the Court of Appeals' decision to deny a certificate of probable cause, (4) the issue of prejudice caused by the alleged denial of the right to appeal could be resolved in a manner different from the one followed by the District Court, given that at least two United States Courts of Appeals have presumed prejudice in such a situation, and (5) the petitioner thus makes a substantial showing that he was denied the right to effective assistance of counsel; under such circumstances, the United States Supreme Court will (1) grant leave to proceed in forma pauperis, (2) grant certiorari, (3) reverse the Court of Appeals' judgment, and (4) remand the case for further proceedings. (Rehnquist, Ch. J., and O'Connor, J., dissented in part from this holding.)

Appeal § 212 — habeas corpus — certificate of probable cause — requirements for issuance

2. In order for a certificate of probable cause to be issued pursuant to 28 USCS § 2253 for an appeal of a habeas corpus judgment, the petitioner must make a substantial showing of the denial of a federal right; in order for a petitioner who has been denied relief in a Federal District Court to make a substantial showing of the denial of a federal right, the petitioner must demonstrate that (1) the issues are debatable among jurists of reason, (2) a court could resolve the issues in a different manner, or (3) the questions are adequate to deserve encouragement to proceed further.

OPINION OF THE COURT

[498 US 430]

Per Curiam.

[1a] Petitioner Jose M. Lozada was convicted in Nevada state court in 1987 of four crimes arising out of the possession and sale of a controlled substance in violation of the laws of that State. Lozada filed no direct appeal. After exhausting state postconviction remedies, he filed a petition for a writ of habeas corpus in the United States District Court for the District of Nevada. Lozada contended that ineffective assistance of counsel had deprived him of the opportunity to appeal his state-court convictions. In particular, he alleged that his attorney failed to inform him of his right to appeal, of the procedures

[498 US 431]

and time limitations for an appeal and of his right to appointed counsel. The habeas petition alleged further that the attorney had failed to file a notice of appeal or to ensure that Lozada received appointed counsel on appeal. It also implied that Lozada had been misled when the attorney told Lozada's sister that his case had been forwarded to the public defender's office.

Without holding a hearing on Lozada's claims, a federal Magistrate recommended that the petition be dismissed. The District Court agreed and dismissed the petition, rejecting the ineffective-assistance claim on the ground that petitioner's allegations failed to satisfy the standard set forth in our decision in Strickland v Washington, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984). The court acknowledged that trial counsel's alleged failure to inform petitioner of his right to appeal might constitute conduct below constitutional standards. It reasoned, however, that Lozada had not indicated what issues he would have raised on appeal and had not demonstrated that the appeal might have succeeded. As a result, the court concluded that petitioner had not shown prejudice under the Strickland test. The District Court later denied Lozada a certificate of probable cause to appeal the denial of habeas relief, see 28 USC § 2253 [28 USCS § 2253], again stating that Lozada had failed to show any prejudice from counsel's alleged errors. The United States Court of Appeals for the Ninth Circuit also denied a certificate of probable cause in a one-sentence order. Lozada filed the instant petition for a writ of certiorari, which we now grant along with his motion for leave to proceed in forma pauperis.

[2] In Barefoot v Estelle, 463 US 880, 892-893, 77 L Ed 2d 1090, 103 S Ct 3383 (1983), we delineated the standards for issuance of a certificate of probable cause. We agreed with the Courts of Appeals that had ruled that "a certificate of probable cause requires petitioner to make a 'substantial showing of the denial of [a] federal right.'" Id., at 893, 77 L Ed 2d 1090, 103 S Ct 3383 (quoting Stewart v Beto, 454 F2d 268, 270, n 2 (CA5 1971), cert denied, 406 US 925, 32 L Ed 2d 126, 92 S Ct 1796 (1972)).

[498 US 432]

We also quoted with approval Gordon v Willis, 516 F Supp 911, 913 (ND Ga 1980) (citing United States ex rel. Jones v Richmond, 245 F2d 234 (CA2), cert denied, 355 US 846, 2 L Ed 2d 56, 78 S Ct 71 (1957)), which explained that in order to make a substantial showing of the denial of a federal right a petitioner who has been denied relief in a district court "'must demonstrate that the issues are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are "adequate to deserve encouragement to proceed further."'" 463 US, at 893, n 4, 77 L Ed 2d 1090, 103 S Ct 3383.

[1b] We conclude that the Court of Appeals erred in denying Lozada a certificate of probable cause because, under the standards set forth in

Barefoot, Lozada made a substantial showing that he was denied the right to effective assistance of counsel. The District Court rested its analysis on the prejudice prong of the Strickland inquiry, and that was presumably the basis for the Court of Appeals' decision to deny a certificate of probable cause. We believe the issue of prejudice caused by the alleged denial of the right to appeal could be resolved in a different manner than the one followed by the District Court. Since Strickland, at least two Courts of Appeals have presumed prejudice in this situation. See Abels v Kaiser, 913 F2d 821, 823 (CA10 1990); Estes v United States, 883 F2d 645, 649 (CA8 1989); see also Rodriquez v United States, 395 US 327, 330, 23 L Ed 2d 340, 89 S Ct 1715 (1969). The order of the Court of Appeals did not cite or analyze this line of authority as reflected in Estes, which had been decided before the Ninth Circuit issued its ruling.

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Chief Justice **Rehnquist** and Justice **O'Connor** would deny the petition for a writ of certiorari.

[498 US 433]

JIMMIE BURDEN, JR., Petitioner

v

WALTER ZANT, Warden

498 US 433, 112 L Ed 2d 962, 111 S Ct 862

[No. 90-5796]

Decided February 19, 1991.

Decision: Court of Appeals, in habeas corpus action, held to have improperly failed to give statutory presumption of correctness to state court finding that prosecution witness testified under grant of immunity.

SUMMARY

A public defender was appointed to represent an accused charged with burglary. While the accused was awaiting trial, his nephew gave a statement to police implicating the accused in four murders. Police charged both the accused and his nephew with the murders, and the public defender representing the accused on the burglary charge began representing both the accused and his nephew with respect to the murder charges. The accused was indicted on the murder charges, but his nephew was not. Shortly after the accused's indictment and before his trial on the murder charges, the accused's attorney left the public defender's office, and another public defender assumed responsibility for representing the accused. At the accused's murder trial in Georgia state court, his nephew testified against him and provided the sole evidence directly linking the accused to the murders. The fact that the accused's nephew was testifying under a grant of immunity was acknowledged in the nephew's cross-examination, in the prosecutor's closing argument, and in the trial court's posttrial report required by state law. The accused was convicted of four counts of murder and sentenced to death. After exhausting his state remedies, the accused filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Georgia, alleging, inter alia, that he had not received effective assistance of counsel because his counsel had labored under a conflict of interest. The court, although crediting the accused's contention that the accused's nephew had received immunity in exchange for his agreement to testify against the accused, denied relief because the

accused had not shown an adverse impact on the representation of his trial counsel (690 F Supp 1040). On appeal, the United States Court of Appeals for the Eleventh Circuit (1) determined that the record was insufficient to evaluate the accused's conflict-of-interest claim, and (2) remanded the case to the District Court for an evidentiary hearing while retaining jurisdiction over the case (871 F2d 956). At the hearing, the public defender who had initially represented the accused testified that, while he had been representing both the accused and his nephew on the murder charges, he had reached "an understanding" with the prosecutor that "as long as [the accused's nephew] testified against [the accused] nothing would happen to him." The District Court nevertheless (1) concluded that there had been no conflict of interest in the accused's representation, and (2) denied habeas corpus relief. Affirming, the Court of Appeals, although recognizing the potential conflict of interest in the public defender's simultaneous representation of the accused and his nephew, (1) held that the conflict had never become actual in the sense that the public defender's representation of the accused's nephew required him to compromise the interest of the accused, and (2) stated that there was no factual support for the accused's claim that the accused's nephew had received immunity in exchange for his testimony against the accused (903 F2d 1352).

Granting leave to proceed in forma pauperis and granting certiorari, the United States Supreme Court reversed and remanded. In a per curiam opinion expressing the unanimous view of the court, it was held that (1) the finding in the state court's posttrial report that the accused's nephew had been granted immunity was a determination of historical fact presumed to be correct under 28 USCS § 2254(d) for the purposes of a federal habeas corpus proceeding; (2) the Court of Appeals' finding that the accused's nephew had not testified under an immunity agreement was contrary to the finding of the state court; and (3) although the presumption of correctness afforded by § 2254(d) may be disregarded if the court finds that one of the enumerated exceptions to § 2254(d) is met, and explains the reasoning in support of that conclusion, the Court of Appeals had neither mentioned the state court's finding regarding the immunity agreement nor explained why that finding was not entitled to a presumption of correctness.

HEADNOTE

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal §§ 910.6, 951, 1092, 1677, 1692.3; Habeas Corpus § 120 — state court finding — presumption of correctness — issue not waived on appeal — in forma pauperis — grant of certiorari — reversal and remand

In a federal habeas corpus proceeding in which an accused seeks relief from his conviction in state court of multiple murders on the ground that he received ineffective assistance of counsel because his counsel labored under a conflict of interest—where (1) both the accused and his nephew had initially been charged with the murders in question; (2) both the accused and his nephew were initially represented on the charges by the same public defender, who withdrew from the

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39 Am Jur 2d, Habeas Corpus §§ 17, 112-114, 152, 160, 174

16 Federal Procedure, L Ed, Habeas Corpus §§ 41:304-41:328

10 Federal Procedural Forms, L Ed, Habeas Corpus §§ 36:31, 36:36-36:38

13 Am Jur Pl & Pr Forms (Rev), Habeas Corpus, Forms 72, 73

20 Am Jur Trials 1, Federal Habeas Corpus Practice

28 USCS § 2254(d)

L Ed Digest, Habeas Corpus § 120

L Ed Index, Collateral Estoppel; Findings of Fact and Conclusions of Law; Habeas Corpus; Presumptions and Burden of Proof; Res Judicata

Index to Annotations, Collateral Estoppel; Findings of Fact; Habeas Corpus; Presumptions and Burden of Proof; Res Judicata

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ANNOTATION REFERENCES

Supreme Court's construction and application of 28 USCS § 2254(d), which provides that in federal habeas corpus proceedings, state court's factual determinations must be presumed to be correct. 88 L Ed 2d 963.

Exhaustion of state remedies as condition of issuance by federal court of writ of habeas corpus for release of state prisoner—Supreme Court cases. 54 L Ed 2d 873.

representation of the accused after the accused's indictment and prior to his trial; (3) the accused's nephew, who was never indicted for the murders, testified for the prosecution at the accused's trial under a grant of immunity, which fact was acknowledged in the cross-examination of the accused's nephew, in the prosecutor's closing argument, and in the posttrial report which the trial court was required by state law to make, and the nephew's testimony provided the sole evidence directly linking the accused to the murders; (4) at a United States District Court's evidentiary hearing, ordered by a United States Court of Appeals in order to evaluate the accused's conflict-of-interest claim, the public defender who had initially represented both the accused and the accused's nephew on the murder charges testified that he had reached "an understanding" with the prosecutor that "as long as [the accused's nephew] testified against [the accused] nothing would happen to him"; (5) the accused, both before the Court of Appeals' remand of the case for an evidentiary hearing and after the remand, had relied upon the state court's finding of immunity to support his conflict-of-interest argument; and (6) in affirming the District Court's denial of habeas corpus relief, the Court of Appeals, holding that there had been no actual conflict of interest in the accused's representation, stated that there was no evidence that the accused's nephew had received immunity in exchange for his testimony against the accused—the United States Supreme Court will grant leave to proceed in forma pauperis, grant a petition for a writ of certiorari, reverse the judgment of the Court of Appeals, and remand the case so that the Court of Appeals may consider the accused's conflict-of-interest claim free from the Court of Appeals' erroneous failure to credit the state court's finding that the accused's nephew testified under a grant of immunity, because (1) the finding in the state court's posttrial report that the accused's nephew had been granted immunity was a determination of historical fact presumed to be correct under 28 USCS § 2254(d) for the purposes of a federal habeas corpus proceeding; (2) the Court of Appeals' finding that the accused's nephew had not testified under an immunity agreement was contrary to the finding of the state court; (3) although the presumption of correctness afforded by § 2254(d) may be disregarded if the court finds that one of the enumerated exceptions to § 2254(d) is met and if the court explains the reasoning in support of that conclusion, the Court of Appeals had neither mentioned the state court's finding regarding the immunity agreement nor explained why that finding was not entitled to a presumption of correctness; and (4) the accused had not waived reliance upon § 2254(d) in the Court of Appeals by failing sufficiently to emphasize the state court's finding of immunity.

OPINION OF THE COURT

[498 US 433]

Per Curiam.

Petitioner argues that the Court of Appeals, in rejecting his conflict-of-interest claim, improperly failed to give a presumption

[498 US 434]

of correctness to a state-court factual finding, in violation of 28 USC § 2254(d) [28 USCS § 2254(d)]. We agree, and accordingly the motion for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted.

On August 1, 1981, petitioner was arrested on a charge of burglarizing his sister's house. Kenneth Kondritzer, a local public defender in a two-attorney public defender's office, was appointed soon thereafter to represent petitioner. While petitioner was awaiting trial on the burglary charge, his nephew, Henry Lee Dixon (the son of the alleged burglary victim), gave a statement to the police implicating petitioner in the unsolved 1974 murders of a woman and her three children. Based upon Dixon's statement, the police obtained warrants on or about September 15, 1981, charging both petitioner and Dixon with the murders. Kondritzer began representing Dixon at about that time, while continuing to represent petitioner. Dixon, however, was never indicted for the murders. At a preliminary hearing on November 19, 1981, in which Kondritzer appeared on Dixon's behalf, the judge ruled that although the State had sufficient evidence to hold Dixon as a material witness against Burden, it did not have sufficient evidence to hold him for the murders.

Petitioner was indicted for the murders on December 7, 1981, while he was still represented by Kondritzer. Kondritzer, however, left the public defender's office at the end of December 1981, and the other public defender in the office, Michael Moses, assumed responsibility for representing petitioner.

After a trial in March 1982, petitioner was convicted of four counts of murder and was sentenced to death. Dixon's testimony at trial provided the sole evidence directly linking petitioner to the murders. 903 F2d 1352, 1356-1357 (CA11 1990). In addition, both Dixon on cross-examination and the prosecutor in his closing argument acknowledged that Dixon

was testifying under a grant of immunity,[1] a fact expressly credited by the trial court in its mandatory post-trial report, see Record, Respondent's Exh. 1, p 54.[2]

After exhausting his state remedies, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Georgia, alleging, inter alia, that he did not receive effective assistance of counsel because his counsel labored under a conflict of interest. Although the District Court credited petitioner's contention that Dixon had received immunity in exchange for his agreement to testify against petitioner, 690 F Supp 1040, 1045 (1988), it nevertheless denied relief because petitioner had not shown an adverse impact on the representation of his *trial* counsel, Moses. Ibid.

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[1] In response to the question, "[H]ave you been promised anything for your testimony today?" Dixon stated, "Immunity." Record, Respondent's Exh. 1G, p 649 (trial transcript). The prosecutor likewise acknowledged to the jury, "[W]e may have offered [Dixon] immunity. I think you realize that we did. I'll tell you that we did." Record, Respondent's Exh. 1I, p 911 (trial transcript).

[2] Under Ga Code Ann § 17-10-35(a) (1990), the trial court must file a report in every case in which the death penalty is imposed. Designed to facilitate review by the Georgia Supreme Court, this report must include, inter alia, the trial judge's assessment of the prosecution's case at trial. See generally Gregg v Georgia, 428 US 153, 167-168, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). The report in petitioner's case notes that Dixon was "[t]he witness most damaging to the defendant's case." Record, Respondent's Exh. 1, p 54. It also states that "Dixon was granted immunity from prosecution and the jury was properly informed of this fact and an appropriate charge was given by the court to the jury." Ibid.

On appeal, the United States Court of Appeals for the Eleventh Circuit determined that the record was not sufficient for it to evaluate petitioner's conflict-of-interest claim, and therefore remanded to the District Court for an evidentiary hearing on that issue, while retaining jurisdiction over the case. 871 F2d 956 (1989). At the hearing, Kondritzer testified that while he was representing both petitioner and

[498 US 436]

Dixon on the murder charges, he reached "an understanding" with the district attorney that "as long as [Dixon] testified [against petitioner] nothing would happen to him." Civ Action No. 88-6-3-MAC (MD Ga, Sept. 20, 1989), p 4. The District Court nevertheless concluded that petitioner had received representation free from a conflict of interest.

The case then returned to the Court of Appeals, which affirmed the District Court's denial of habeas relief. Although the court recognized the potential conflict of interest in Kondritzer's simultaneous representation of petitioner and Dixon, it held that "the conflict never became actual in the sense that Kondritzer's representation of Dixon's interests required him to compromise [petitioner's] interests." 903 F2d, at 1359. In addressing petitioner's argument that the dual representation adversely affected petitioner's interests because Kondritzer negotiated an immunity agreement for Dixon, the Court of Appeals stated:

> "[T]he assumption that Dixon received a grant of transactional immunity, negotiated by Kondritzer and the prosecutor in exchange for Dixon's testimony against [petitioner], is without factual support. . . . There is no documentary evidence of any sort that attests to Dixon's having received immunity . . . . Thus, [petitioner] can no longer base his conflict-of-interest claim on the mistaken assumption that the attorney representing him obtained or attempted to obtain immunity for one client in exchange for testimony that was instrumental in the conviction of another." Id., at 1359-1360.

As petitioner argues, the Court of Appeals' finding that Dixon did not testify under an immunity agreement is contrary to the express finding in the state trial court's report that "Dixon was granted immunity from prosecution." Record, Respondent's Exh. 1, p 54. This finding, made pursuant to statutory directive, see n 2, supra, and based on Dixon's testimony and the prosecutor's closing argument at trial, see n 1, supra, is a determination of historical fact

[498 US 437]

"presumed to be correct" for purposes of a federal habeas corpus proceeding. See 28 USC § 2254(d) [28 USCS § 2254(d)].[3] A habeas court may not disregard this presumption unless it expressly finds that one of the enumerated exceptions to § 2254(d) is met, and it explains the reasoning in support of that conclusion. See Sumner v Mata, 449 US 539, 549, 551, 66 L Ed 2d 722, 101 S Ct 764 (1981). The Court of Appeals did not even *mention* the trial court's finding that Dixon received immunity, much less explain why that finding is not entitled to a presumption of correctness.

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[3] Section 2254(d) provides in pertinent part:

"In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct . . . ."

Respondent maintains that petitioner "waived" reliance on § 2254(d) in the Court of Appeals by failing sufficiently to emphasize the trial court's finding that Dixon received immunity. This contention mischaracterizes the record. In his first brief to the Court of Appeals, before remand, petitioner repeatedly stated, in support of his conflict-of-interest argument, that Dixon had testified under a grant of immunity. See Brief for Petitioner-Appellant in No. 88-8619, pp 5, 6, 8, 11, 13-14, 15, 17, 22, 23. Indeed, that factual assertion was the crux of petitioner's argument. In his supplemental letter memorandum, after remand, the immunity agreement was again the central fact supporting his conflict-of-interest claim. The brief began by stating that petitioner did not understand why there was a dispute over Dixon's immunity, since the state trial judge had specifically found that Dixon had testified under a grant of immunity. Letter Memorandum for Petitioner-Appellant in No. 88-8619 (CA11), p 1; see also id., at 9. Petitioner then asserted that the state court's finding was "entitled to the presumption of correctness."

[498 US 438]

Ibid. Thus, it seems clear that petitioner adequately raised the argument below.

Consequently, we reverse and remand so that the Court of Appeals may consider petitioner's conflict-of-interest claim free from its erroneous failure to credit the state trial court's finding that Dixon testified under a grant of immunity.

It is so ordered.

[498 US 439]

MARK E. DENNIS, Petitioner

v

MARGARET L. HIGGINS, Director, Nebraska Department of Motor Vehicles, et al.

498 US 439, 112 L Ed 2d 969, 111 S Ct 865

[No. 89-1555]

Argued October 31, 1990. Decided February 20, 1991.

Decision: Cause of action for violations of Federal Constitution's commerce clause (Art I, § 8, cl 3) held to exist under 42 USCS § 1983.

SUMMARY

The state of Nebraska imposed certain taxes and fees on motor carriers whose vehicles were registered in certain other states, including Ohio. However, Nebraska imposed no comparable tax or fee on carriers whose vehicles were registered in Nebraska. An individual taxpayer who did business as an unincorporated motor carrier, with his principal place of business in Ohio, owned tractors and trailers that were registered in Ohio and were operated in several states, including Nebraska. The taxpayer, alleging that the Nebraska taxes and fees in question were "retaliatory," brought suit in a Nebraska trial court against the state of Nebraska and various state officials. The taxpayer asserted, among other claims, that the imposition of the taxes and fees (1) constituted an unlawful burden on interstate commerce in violation of the Federal Constitution's commerce clause (Art I, § 8, cl 3), and (2) violated 42 USCS § 1983 by depriving him of rights secured by the Federal Constitution. The taxpayer sought declarative and injunctive relief, refunds of all allegedly retaliatory taxes and fees paid, and attorneys' fees and costs. After a bench trial, the trial court (1) concluded that the taxes and fees violated the commerce clause, (2) permanently enjoined the defendants from collecting the taxes and fees, and (3) held that the taxpayer was entitled to attorneys' fees and expenses under the equitable "common fund" doctrine, but (4) entered judgment for the defendants on the remaining claims, including the § 1983 claim. The taxpayer appealed the dismissal of his § 1983 claim, and the defendants cross-appealed on the issue of attorneys' fees and expenses, but there was no

Briefs of Counsel, p 1273, infra.

appeal as to the commerce clause issue. On appeal, the Supreme Court of Nebraska (1) affirmed the dismissal of the § 1983 claim, on the ground that there was no cause of action under § 1983 for violations of the commerce clause, and (2) reversed the trial court's allowance of fees and expenses under the common fund doctrine (234 Neb 427, 451 NW2d 676).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by White, J., joined by Marshall, Blackmun, Stevens, O'Connor, Scalia, and Souter, JJ., it was held that (1) the commerce clause confers "rights, privileges, or immunities" within the meaning of § 1983, in that (a) the commerce clause imposes substantive limitations on state regulation of commerce and is the source of a right of action in those injured by regulations that exceed such limitations, and (b) the United States Supreme Court's repeated references to "rights" under the commerce clause constitute a recognition that the clause is intended not merely to promote national economic and political union, but also to benefit individuals who are engaged in interstate commerce; and therefore (2) suits for violations of the commerce clause may properly be brought under § 1983.

Kennedy, J., joined by Rehnquist, Ch. J., dissenting, expressed the view that (1) with respect to federal constitutional provisions, those which secure the rights of persons vis-a-vis the states secure "rights" within the meaning of § 1983, but those which allocate power between the Federal Government and the states do not secure such "rights"; (2) the commerce clause does not secure a personal right to engage in interstate commerce, since the clause benefits particular parties only as an incident of the clause's allocation of power between federal and state sovereignties; and (3) the result of the court's decision—that a § 1983 claim may permit plaintiffs in "dormant commerce clause" litigation to recover attorneys' fees and expenses under 42 USCS § 1988—did not vindicate the purposes of § 1983 or § 1988, but merely shifted power away from the states and toward interstate businesses.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Civil Rights § 22; Commerce §§ 4, 96 — suits under 42 USCS § 1983 — violation of commerce clause rights — intent of clause

1a-1g. The Federal Constitution's commerce clause (Art I, § 8, cl 3) confers "rights, privileges, or immunities" within the meaning of 42 USCS § 1983, in that (1) the commerce clause does not merely allocate power between the Federal Government and the states, but also (a) imposes substantive limitations on state regulation of commerce, and (b) is the source of a right of action in those injured by regulations that exceed such limitations; and (2) the United States Supreme Court's repeated references to "rights" under the commerce clause constitute a recognition that the clause is intended not merely to promote national economic and political union, but also to benefit individuals who are engaged in interstate commerce; the fact that a right under the com-

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7A Am Jur 2d, Automobiles and Highway Traffic § 74; 15 Am Jur 2d, Civil Rights §§ 5, 19; 15A Am Jur 2d, Commerce §§ 2, 11

6 Federal Procedure, L Ed, Civil Rights § 11:257

USCS, Constitution, Art I, § 8, cl 3; 42 USCS § 1983

L Ed Digest, Civil Rights § 22; Commerce §§ 4, 96

L Ed Index, Automobiles and Highway Traffic; Carriers; Civil Rights and Discrimination; Commerce; Retaliation or Revenge

Index to Annotations, Automobiles and Highway Traffic; Carriers; Commerce Clause; Discrimination

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ANNOTATION REFERENCES

Supreme Court's construction of Civil Rights Act of 1871 (42 USCS § 1983) providing private right of action for violation of federal rights. 43 L Ed 2d 833.

Right to relief, under 42 USCS § 1983, for alleged unlawful action by state or local tax officials. 50 ALR Fed 773.

State taxation of motor carriers as affected by commerce clause. 17 ALR2d 421.

merce clause is an implied right does not diminish its status as a right, privilege, or immunity under § 1983; therefore, (1) suits for violations of the commerce clause may properly be brought under § 1983, and (2) an individual may properly bring a claim, under § 1983, that the commerce clause is violated by certain allegedly retaliatory taxes and fees imposed by a state on motor carriers with vehicles registered in other states and operated in that state. (Kennedy, J., and Rehnquist, Ch. J., dissented from this holding.)

Civil Rights § 22; Statutes §§ 145.4, 164, 195 — 42 USCS § 1983 — construction

2. The prime focus of 42 USCS § 1983 and related provisions is to insure a right of action to enforce the protections of the Federal Constitution's Fourteenth Amendment and the federal laws enacted pursuant thereto; however, a broad construction of § 1983 is compelled by (1) the statutory language, which speaks of deprivations of "any" rights, privileges, or immunities secured by the Federal Constitution and laws, and (2) the legislative history, which stresses that § 1983, as a remedial statute, should be liberally and beneficently construed.

Commerce § 96 — relation between state and federal power

3. The Federal Constitution's commerce clause (Art I, § 8, cl 3) is a power-allocating provision that gives Congress pre-emptive authority over the regulation of interstate commerce.

Actions § 2; Declaratory Judgments § 4; Injunction § 72 — commerce clause violation

4. Individuals injured by state action that violates the Federal Constitution's commerce clause (Art I, § 8, cl 3) are permitted to sue and obtain injunctive and declaratory relief.

Civil Rights § 22 — 42 USCS § 1983 — violation of implied rights

5a, 5b. For purposes of 42 USCS § 1983, which provides a cause of action for the deprivation of any federal rights, privileges, or immunities, the violation of a federal right that has been found to be implicit in a statute's language and structure is as much a direct violation of a right as is the violation of a right that is clearly set forth in the text of the statute.

Civil Rights § 22; Constitutional Law § 34; States, Territories, and Possessions § 18 — supremacy clause — claims covered by 42 USCS § 1983

6a, 6b. Claims under the Federal Constitution's supremacy clause (Art VI, cl 2) are excluded from the coverage of 42 USCS § 1983—which provides a cause of action for the deprivation of any rights, privileges, or immunities under the Federal Constitution "and laws"—because (1) the supremacy clause is not a source of any federal rights; (2) rather, the supremacy clause secures federal rights by according them priority whenever they come into conflict with state law; and (3) if supremacy clause claims were included within the coverage of § 1983, the "and laws" provision in § 1983 would be superfluous.

Civil Rights § 4 — effect of federal provisions on state law

7. Federal statutory rights operate as a guarantee of freedom for private conduct that the state may not abridge until such rights are altered or eliminated by Congress.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner motor carrier filed suit in a Nebraska trial court, claiming, inter alia, that certain "retaliatory" taxes and fees the State imposed on motor carriers and vehicles such as his, which are registered in other States but operate in Nebraska, constituted an unlawful burden on interstate commerce and that respondents were liable under 42 USC § 1983 [42 USCS § 1983]. Among other things, the court concluded that the taxes and fees violated the Commerce Clause and permanently enjoined respondents from assessing, levying, or collecting them; but it dismissed petitioner's § 1983 claim. The State Supreme Court affirmed the dismissal, holding that there is no cause of action under § 1983 for Commerce Clause violations because the Clause allocates power between the State and Federal Governments and does not establish individual rights against the government.

Held: Suits for violations of the Commerce Clause may be brought under § 1983.

(a) A broad construction of § 1983 is compelled by the statutory language, which speaks of deprivations of "any rights, privileges, or immunities secured by the Constitution and laws." It is also supported by § 1983's legislative history and by this Court's decisions, which have rejected attempts to limit the types of constitutional rights that are encompassed within the phrase "rights, privileges, or immunities," see, e. g., Lynch v Household Finance Corp., 405 US 538, 31 L Ed 2d 424, 92 S Ct 1113.

(b) The Commerce Clause confers "rights, privileges, or immunities" within the meaning of § 1983. In addition to conferring power on the Federal Government, the Clause is a substantive restriction on permissible state regulation of interstate commerce. And individuals injured by state action violating this aspect of the Clause may sue and obtain injunctive and declaratory relief. The three considerations for determining whether a federal statute confers a "right" within the meaning of § 1983—that the provision creates obligations binding on the governmental unit, that the plaintiff's interest is not too vague and amorphous to be beyond the judiciary's competence to enforce, and that the provision was intended to benefit the plaintiff—also weigh in favor of recognition of a right under the Clause. Respondents' argument that the Clause was not designed to benefit the individual has been implicitly rejected, Boston Stock Exchange v State Tax Comm'n, 429 US 318, 321, n 3, 50 L Ed 2d 514, 97 S Ct 599, and this Court's repeated references to "rights" under the Clause constitute a recognition that it was intended to benefit those who are engaged in interstate commerce, see, e. g., Crutcher v Kentucky, 141 US 47, 57, 35 L Ed 649, 11 S Ct 851. Respondents' attempt to analogize the Commerce Clause to the Supremacy Clause, which does not confer "rights, privileges, or immunities" under § 1983, is also rejected. Unlike the Commerce Clause, the Supremacy Clause is not a source of federal rights but merely secures federal rights by according them priority when they come into conflict with state law. The fact that the protection from interference with trade conferred by the Commerce Clause may be qualified or eliminated by Congress does not mean that it cannot be a "right," for, until Congress does so, such protection operates as a guarantee of freedom for private conduct that the State may not abridge.

234 Neb 427, 451 NW2d 676, reversed and remanded.

White, J., delivered the opinion of the Court, in which Marshall, Blackmun, Stevens, O'Connor, Scalia, and Souter, JJ., joined. Kennedy, J., filed a dissenting opinion, in which Rehnquist, C. J., joined.

APPEARANCES OF COUNSEL

Richard A. Allen argued the cause for petitioner.
L. Jay Bartel argued the cause for respondents.
Briefs of Counsel, p 1273, infra.

OPINION OF THE COURT

[498 US 440]

Justice **White** delivered the opinion of the Court.

[1a] This case presents the question whether suits for violations of the Commerce Clause may be brought under 93 Stat 1284, as amended, 42 USC § 1983 [42 USCS § 1983]. We hold that they may.

[498 US 441]

I

Petitioner does business as an unincorporated motor carrier with his principal place of business in Ohio. He owns tractors and trailers that are registered in Ohio and operated in several States including Nebraska. On December 17, 1984, he filed a class-action suit in a Nebraska trial court challenging the constitutionality of certain "retaliatory" taxes and fees imposed by the State of Nebraska on motor carriers with vehicles registered in other States and operated in Nebraska.[1] In his complaint, petitioner claimed, inter alia, that the taxes and fees constituted an unlawful burden on interstate commerce and that respondents were liable under 42 USC § 1983 [42 USCS § 1983]. Petitioner sought declaratory and injunctive relief, refunds of all retaliatory taxes and fees paid, and attorney's fees and costs.

After a bench trial based on stipulated facts, the court concluded that the taxes and fees at issue violated the Commerce Clause "because they are imposed only on motor carriers whose vehicles are registered outside the State of Nebraska, while no comparable tax or fee is imposed on carriers whose vehicles are registered in the State of Nebraska." App to Pet for Cert 29a. It therefore permanently enjoined respondents from "assessing, levying, or collecting" the taxes and fees. Id., at 30a. The court also held that petitioner was entitled to attorney's fees and expenses under the equitable "common fund" doctrine. The court, however, entered judgment for respondents on the remaining claims, including the § 1983 claim. Petitioner appealed the dismissal [498 US 442] of his § 1983 claim, and respondents cross-appealed the trial court's allowance of attorney's fees and expenses under the common fund doctrine. Respondents did not, however, appeal the trial court's determination that the retaliatory taxes and fees violated the Commerce Clause.

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[1] The taxes and fees at issue were imposed pursuant to Neb Rev Stat § 60-305.02 (1984), which has since been amended. The taxes and fees were considered "retaliatory" because they were imposed on vehicles registered in certain other States (Arizona, Arkansas, Idaho, Nevada, New York, Ohio, Oregon, Pennsylvania, and Wyoming) in an amount equal to the "third structure taxes" imposed by those States on Nebraska-registered vehicles. "Third structure taxes" are taxes and fees imposed in addition to registration fees and fuel taxes (so-called "first structure" and "second structure" taxes).

The Supreme Court of Nebraska affirmed the dismissal of petitioner's § 1983 claim, but reversed the trial court's allowance of fees and expenses under the common fund doctrine. See Dennis v State, 234 Neb 427, 451 NW2d 676 (1990). With respect to the § 1983 claim, the Nebraska Supreme Court held that "[d]espite the broad language of § 1983 . . . there is no cause of action under § 1983 for violations of the commerce clause." Id., at 430, 451 NW2d, at 678. The court relied largely on the reasoning in Consolidated Freightways Corp. of Delaware v Kassel, 730 F2d 1139 (CA8), cert denied, 469 US 834, 83 L Ed 2d 68, 105 S Ct 126 (1984), which held that claims under the Commerce Clause are not cognizable under § 1983 because, among other things, "the Commerce Clause does not establish individual rights against government, but instead allocates power between the state and federal governments." 730 F2d, at 1144.

As the Supreme Court of Nebraska recognized, see 234 Neb, at 430, 451 NW2d, at 678, there is a division of authority on the question whether claims for violations of the Commerce Clause may be brought under § 1983.[2] We granted certiorari to resolve this issue, 495 US 956, 109 L Ed 2d 741, 110 S Ct 2559 (1990), and we now reverse.

[498 US 443]

II

[2] A broad construction of § 1983[3] is compelled by the statutory language, which speaks of deprivations of "*any* rights, privileges, or immunities secured by the Constitution and laws." (Emphasis added.) Accordingly, we have "repeatedly held that the coverage of [§ 1983] must be broadly construed." Golden State Transit Corp. v Los Angeles, 493 US 103, 105, 107 L Ed 2d 420, 110 S Ct 444 (1989). The legislative history of the section also stresses that as a remedial statute, it should be "'liberally and beneficently construed.'" Monell v New York City Dept. of Social Services, 436 US

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[2] Compare Kraft v Jacka, 872 F2d 862, 869 (CA9 1989); J & J Anderson, Inc. v Erie, 767 F2d 1469, 1476-1477 (CA10 1985); and Consolidated Freightways Corp. of Delaware v Kassel, 730 F2d 1139 (CA8), cert denied, 469 US 834, 83 L Ed 2d 68, 105 S Ct 126 (1984), with Continental Illinois Corp. v Lewis, 838 F2d 457, 458 (CA11 1988), vacated on other grounds, 494 US 472, 108 L Ed 2d 400, 110 S Ct 1249 (1990); Martin-Marietta Corp. v Bendix Corp. 690 F2d 558, 562 (CA6 1982); and Kennecott Corp. v Smith, 637 F2d 181, 186, n 5 (CA3 1980). See also Private Truck Council of America, Inc. v Quinn, 476 US 1129, 90 L Ed 2d 677, 106 S Ct 1997 (1986) (White, J., joined by Brennan and O'Connor, JJ., dissenting from denial of certiorari) (noting conflict of authority).

[3] Section 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 USC § 1983 [42 USCS § 1983].

658, 684, 56 L Ed 2d 611, 98 S Ct 2018 (1978) (quoting Rep. Shellabarger, Cong Globe, 42d Cong, 1st Sess, App 68 (1871)).[4]

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[4] The dissent contends that the legislative history of § 1983 supports the proposition that § 1983 does not apply to constitutional provisions that allocate power. See post, at 454-457, 112 L Ed 2d, at 983-984. That argument is untenable. The dissent chiefly relies upon a partial quotation of a statement made by Representative Shellabarger, one of the principal sponsors of the statute. In context, the statement reads:

"*My next proposition is historical, and one simply in aid and support of the truth of the first* [i.e., that "Congress is bound to execute, by legislation, every provision of the Constitution, even those provisions not specially named as to be so enforced"]. *It is that the United States always has assumed to enforce, as against the States, and also persons, every one of the provisions of the Constitution.* Most of the provisions of the Constitution which restrain and directly relate to the States, such as those in tenth section of first article, that 'no State shall make a treaty,' 'grant letters of marque,' 'coin money,' 'emit bills of credit,' &c., relate to the divisions of the political powers of the State and General Governments. They do not relate directly to the rights of persons within the States and as between the States and such persons therein. These prohibitions upon the political powers of the States are all of such nature that they can be, and even have been, when the occasion arose, enforced by the courts of the United States declaring void all State acts of encroachment on Federal powers. Thus, and thus sufficiently, has the United States 'enforced' these provisions of the Constitution. But there are some that are not of this class. These are where the court secures the rights or the liabilities of persons within the States, as between such persons and the States.

"These three are: first, that as to fugitives from justice; second, that as to fugitives from service, (or slaves;) third, that declaring that the 'citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.'

"*And, sir, every one of these—the only provisions where it was deemed that legislation was required to enforce the constitutional provisions—the only three where the rights or liabilities of persons in the States, as between these persons and the States, are directly provided for, Congress has by legislation affirmatively interfered to protect or to subject such persons.*" Cong Globe, at App 69-70 (emphasis added to reflect omissions in dissent).

It should first be noted that Shellabarger was not in the above quotation addressing the part of the 1871 statute that became § 1983, i.e., § 1. Rather, he was discussing *§ 2* of the bill, which made it a federal crime to engage in a conspiracy "to do any act in violation of the rights, privileges, or immunities of another person . . . committed within a place under the sole and exclusive jurisdiction of the United States." Id., at 68. A principal objection to that section was that Congress lacked the authority to enact it, because it infringed upon the powers reserved to the States by overriding their authority to define and punish crimes. See, id., at 69. In answering that argument, Shellabarger contended that Congress had the power to enforce by legislation "every one of the provisions of the Constitution." He observed that most of the provisions of the Constitution "which restrain and directly relate to the States" had been enforced by the courts without federal legislation, but noted that three provisions limiting state authority—the Extradition Clause, the Privileges and Immunities Clause, and the Fugitive Slave Clause—had been enforced pursuant to federal legislation.

It becomes clear that fully quoted and properly read, Shellabarger's remarks do not in any way aid the dissent. The dissent's attempt to characterize Shellabarger's argument for *expansive* federal power to enact criminal legislation as support for a *narrow* construction of § 1983 is strained, to say the least. Shellabarger simply did not address the issues of which constitutional provisions establish "rights, privileges, or immunities," whether the Commerce Clause falls into that category, or whether provisions that allocate power cannot also confer rights. Nor would it be likely that he would have made any of the statements on these points argued by the dissent, given this Court's then-recent holding that the affirmative grant of power to Congress in the Credit Clause established a "right, privilege, or immunity." See The Banks v The Mayor, 7 Wall 16, 22, 19 L Ed 57 (1869). The other snippets of legislative history relied upon by the dissent, see post, at 456-457, 112 L Ed 2d, at 984, are similarly inapposite and inconclusive.

In any event, even if the dissent's cut-and-paste history could be read to provide some support for its formalistic distinction between power-allocating and rights-conferring provisions of the Constitution, it plainly does not constitute a "a clearly expressed legislative intent contrary to the plain language of

[498 US 444]

As respondents argue, the "prime focus" of § 1983 and related provisions was to ensure "a right of action to enforce the protections of the Fourteenth Amendment and the federal

[498 US 445]

laws enacted pursuant thereto," Chapman v Houston Welfare Rights Organization, 441 US 600, 611, 60 L Ed 2d 508, 99 S Ct 1905 (1979), but the Court has never restricted the section's scope to the effectuation of that goal. Rather, we have given full effect to its broad language, recognizing that § 1983 "provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights." Monell, supra, at 700-701, 56 L Ed 2d 611, 98 S Ct 2018. Thus, for example, we have refused to limit the phrase "and laws" in § 1983 to civil rights or equal protection laws. See Maine v Thiboutot, 448 US 1, 4, 6-8, 65 L Ed 2d 555, 100 S Ct 2502 (1980).

Even more relevant to this case, we have rejected attempts to limit the types of constitutional rights that are encompassed within the phrase "rights, privileges, or immunities." For example, in Lynch v Household Finance Corp. 405 US 538, 31 L Ed 2d 424, 92 S Ct 1113 (1972), we refused to limit the phrase to "personal" rights, as opposed to "property" rights.[5] We first

[498 US 446]

noted that neither the words nor the legislative history of the statute distinguished between personal and property rights. Id., at 543, 31 L Ed 2d 424, 92 S Ct 1113. We also rejected that distinction because of the "virtual impossibility" of applying it, particularly in "mixed" cases involving both types of rights. Id., at 550-551, 31 L Ed 2d 424, 92 S Ct 1113. We further concluded that "the dichotomy between personal liberties and property rights is a false one. . . . The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account." Id., at 552, 31 L Ed 2d 424, 92 S Ct 1113. See also United States v Price, 383 US 787, 800-806, 16 L Ed 2d 267, 86 S Ct 1152 (1966).

[1b] Petitioner contends that the Commerce Clause confers "rights, privileges, or immunities" within the meaning of § 1983. We agree. The Commerce Clause provides that "Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." US Const, Art I, § 8, cl 3. Although the language of that Clause speaks only of Congress' power over commerce, "the Court long has recognized that it also limits the power of the States to erect barriers against interstate trade." Lewis v BT Investment Man-

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[§ 1983]." American Tobacco Co. v Patterson, 456 US 63, 75, 71 L Ed 2d 748, 102 S Ct 1534 (1982). Rather, if Congress had intended to limit the "broad and unqualified" language of § 1983, "it is not unreasonable to assume that it would have made this explicit." St. Paul Fire & Marine Ins. Co. v Barry, 438 US 531, 550, 57 L Ed 2d 932, 98 S Ct 2923 (1978).

[5] The statute at issue in Lynch was the jurisdictional counterpart to § 1983, 28 USC § 1343(3) [28 USCS § 1343(3)], which contains the same "rights, privileges, or immunities" phrase. Even the dissent in Lynch agreed "without reservation" that the phrase was not limited to violations of "personal" rights, but disagreed with the majority on a different issue. See 405 US, at 556, 31 L Ed 2d 424, 92 S Ct 1113.

agers, Inc. 447 US 27, 35, 64 L Ed 2d 702, 100 S Ct 2009 (1980).[6]

[498 US 447]

[1c, 3, 4, 5a] Respondents argue, as the court below held, that the Commerce Clause merely allocates power between the Federal and State Governments and does not confer "rights." Brief for Respondents 14-17. There is no doubt that the Commerce Clause is a power-allocating provision, giving Congress pre-emptive authority over the regulation of interstate commerce. It is also clear, however, that the Commerce Clause does more than confer power on the Federal Government; it is also a substantive "restriction on permissible state regulation" of interstate commerce. Hughes v Oklahoma, 441 US 322, 326, 60 L Ed 2d 250, 99 S Ct 1727 (1979). The Commerce Clause "has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce." South-Central Timber Development, Inc. v Wunnicke, 467 US 82, 87, 81 L Ed 2d 71, 104 S Ct 2237 (1984). In addition, individuals injured by state action that violates this aspect of the Commerce Clause may sue and obtain injunctive and declaratory relief. See, e.g., McKesson Corp. v Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Fla., 496 US 18, 31, 110 L Ed 2d 17, 110 S Ct 2238 (1990). Indeed, the trial court in the case before us awarded petitioner such relief, and respondents do not contest that decision. We have also recently held that taxpayers who are required to pay taxes before challenging a state tax that is subsequently determined to violate the Commerce Clause are entitled to retrospective relief "that will cure any unconstitutional discrimination against interstate commerce during the contested tax period." Id., at 51, 110 L Ed 2d 17, 110 S Ct 2238. This combined restriction on state power and entitlement to relief under the Commerce Clause amounts to a "right, privilege, or immunity" under the ordinary meaning of those terms.[7]

[498 US 448]

The Court has often described the Commerce Clause as conferring a "right" to engage in interstate trade free from restrictive state regulation. In Crutcher v Kentucky, 141 US 47, 35 L Ed 649, 11 S Ct 851

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[6] See, e.g., CTS Corp. v Dynamics Corp. of America, 481 US 69, 87, 95 L Ed 2d 67, 107 S Ct 1637 (1987); Hughes v Oklahoma, 441 US 322, 326, 60 L Ed 2d 250, 99 S Ct 1727 (1979); Great Atlantic & Pacific Tea Co. v Cottrell, 424 US 366, 370-371, 47 L Ed 2d 55, 96 S Ct 923 (1976); Cooley v Board of Wardens of Port of Philadelphia, 12 How 299, 318, 13 L Ed 996 (1852). These cases are distinguishable from cases involving assertions that state regulations of commerce directly conflict with federal regulations enacted under the authority of the Commerce Clause. An example of the latter is Gibbons v Ogden, 9 Wheat 1, 6 L Ed 23 (1824), in which the Court struck down a New York statute to the extent that it excluded federally licensed boats from operating in New York waters.

[7] **[1d, 5b]** See, e.g., Black's Law Dictionary 1324 (6th ed 1990) (defining "right" as "[a] legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act") (citing Restatement of Property § 1 (1936)). That the right at issue here is an implied right under the Commerce Clause does not diminish its status as a "right, privilege, or immunity" under § 1983. Indeed, we have already rejected a distinction between express and implied rights under § 1983 in the statutory context. "The violation of a federal right that has been found to be implicit in a statute's language and structure is as much a 'direct violation' of a right as is the violation of a right that is clearly set forth in the text of the statute." Golden State Transit Corp. v Los Angeles, 493 US 103, 112, 107 L Ed 2d 420, 110 S Ct 444 (1989).

(1891), in which the Court struck down a license requirement imposed on certain out-of-state companies, the Court stated: "To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States." Id., at 57, 35 L Ed 649, 11 S Ct 851. Similarly, Western Union Telegraph Co. v Kansas ex rel. Coleman, 216 US 1, 26, 54 L Ed 355, 30 S Ct 190 (1910), referred to "the substantial rights of those engaged in interstate commerce." And Garrity v New Jersey, 385 US 493, 500, 17 L Ed 2d 562, 87 S Ct 616 (1967), declared that engaging in interstate commerce is a "righ[t] of constitutional stature." More recently, Boston Stock Exchange v State Tax Comm'n, 429 US 318, 50 L Ed 2d 514, 97 S Ct 599 (1977), held that regional stock exchanges had standing to challenge a tax on securities transactions as violating the Commerce Clause because, among other things, the exchanges were "asserting their right under the Commerce Clause to engage in interstate commerce free of discriminatory taxes on their business and they allege that the transfer tax indirectly infringes on that right." Id., at 320, n 3, 50 L Ed 2d 514, 97 S Ct 559.

[1e] Last Term, in Golden State Transit Corp. v Los Angeles, 493 US 103, 107 L Ed 2d 420, 110 S Ct 444 (1989), we set forth three considerations for determining whether a federal *statute* confers a "right" within the meaning of § 1983:

> "In deciding whether a federal right has been violated, we have considered [1] whether the provision in question
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> [498 US 449]
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> creates obligations binding on the governmental unit or rather 'does no more than express a congressional preference for certain kinds of treatment.' Pennhurst State School and Hospital v Halderman, 451 US 1, 19 [67 L Ed 2d 694, 101 S Ct 1531] (1981). [2] The interest the plaintiff asserts must not be 'too vague and amorphous' to be 'beyond the competence of the judiciary to enforce.' Wright v Roanoke Redevelopment and Housing Authority, 479 US 418, 431-432 [93 L Ed 2d 781, 107 S Ct 766] (1987). [3] We have also asked whether the provision in question was 'intend[ed] to benefit' the putative plaintiff. Id., at 430 [93 L Ed 2d 781, 107 S Ct 766]; see also id., at 433 [93 L Ed 2d 781, 107 S Ct 766] (O'Connor, J., dissenting) (citing Cort v Ash, 422 US 66, 78 [45 L Ed 2d 26, 95 S Ct 2080] (1975)." Id., at 106, 107 L Ed 2d 420, 110 S Ct 444.

See also Wilder v Virginia Hospital Assn., 496 US 498, 509, 110 L Ed 2d 455, 110 S Ct 2510 (1990). Respondents do not dispute that the first two considerations weigh in favor of recognition of a right here, but seize upon the third consideration—intent to benefit the plaintiff—arguing that the Commerce Clause does not confer rights within the meaning of § 1983 because it was not designed to benefit individuals, but rather was designed to promote national economic and political union. Brief for Respondents 19-24.

This argument, however, was implicitly rejected in Boston Stock Exchange, supra, at 321, n 3, 50 L Ed 2d 514, 97 S Ct 599, where we found that the plaintiffs were arguably within the "zone of interests" protected by the Commerce Clause. Moreover, the Court's repeated references to "rights" under the Commerce Clause constitute a recognition that the Clause *was* intended to benefit those who, like petitioner, are engaged in interstate commerce. The "[c]onstitutional protection against burdens on commerce is for [their] benefit . . . ." Morgan v Virginia, 328 US 373, 376-377, 90 L Ed 1317, 66 S Ct 1050, 165 ALR 574 (1946). As Justice Jackson, writing for the Court, eloquently explained:

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free **[498 US 450]** access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality." H. P. Hood & Sons, Inc. v Du Mond, 336 US 525, 539, 93 L Ed 465, 69 S Ct 657 (1949).

[1f, 6a] Respondents attempt to analogize the Commerce Clause to the Supremacy Clause, Brief for Respondents 17-18, which we have held does not by itself confer any "rights, privileges, or immunities" within the meaning of § 1983. See Golden State, supra, at 106, 107 L Ed 2d 420, 110 S Ct 444; Chapman, 441 US, at 613, 60 L Ed 2d 508, 99 S Ct 1905. The Supremacy Clause, however, is "not a source of any federal rights"; rather, it " 'secure[s]' federal rights by according them priority whenever they come in conflict with state law." Ibid. By contrast, the Commerce Clause of its own force imposes limitations on state regulation of commerce and is the source of a right of action in those injured by regulations that exceed such limitations.[8]

[7] Respondents also argue that the protection from interference with trade conferred by the Commerce Clause cannot be a "right" because it is subject to qualification or elimination by Congress. Brief for Respondents 21. That argument proves too much, however, because federal statutory rights may also be altered or eliminated by Congress. Until Congress does so, such rights operate as "a guarantee of freedom for private conduct that the State may not abridge." **[498 US 451]** Golden State, supra, at 112, 107 L Ed 2d 420, 110 S Ct 444. The same is true of the Commerce Clause.[9]

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[8] **[6b]** An additional reason why claims under the Supremacy Clause, unlike those under the Commerce Clause, should be excluded from the coverage of § 1983 is that if they were included, the "and laws" provision in § 1983 would be superfluous. See Golden State, 493 US, at 107, n 4, 107 L Ed 2d 420, 110 S Ct 444.

[9] In arguing that the Commerce Clause does not secure any rights, privileges, or immunities within the meaning of § 1983, the dissent relies upon Carter v Greenhow, 114 US 317, 29 L Ed 202, 5 S Ct 928 (1885). See post, at 457-458, 112 L Ed 2d, at 985. This Court, however, has already given that decision a narrow reading, stating that the case "held as a matter of pleading that the particular cause of action set up in the plaintiff's pleading was in contract and was not to redress deprivation of the 'right secured to him by that clause of the Constitution' [the contract clause], to which he had 'chosen not to resort.' " Chapman v Houston Welfare Rights Organization, 441 US 600, 613, n 29, 60 L Ed 2d 508, 99 S Ct 1905 (1979); see also Hague v Committee for Industrial Organization, 307 US 496, 527, 83 L Ed 1423, 59 S Ct 954 (1939) (opinion of Stone, J.).

III

[1g] We conclude that the Supreme Court of Nebraska erred in holding that petitioner's Commerce Clause claim could not be brought under 42 USC § 1983 [42 USCS § 1983]. The judgment of the Supreme Court of Nebraska is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SEPARATE OPINION

Justice **Kennedy,** with whom The **Chief Justice** joins, dissenting.

In Golden State Transit Corp. v Los Angeles, 493 US 103, 114, 107 L Ed 2d 420, 110 S Ct 444 (1990), I dissented from the Court's determination that 42 USC § 1983 [42 USCS § 1983] creates a cause of action for damages when the only wrong committed by the State or local entity is its misapprehension of the boundary between state and federal power. Today's decision compounds the error of Golden State. The majority drifts far from the purposes and history of § 1983 and again holds § 1983 applicable to a State's quite innocent but mistaken judgment respecting the shifting boundary between two sovereign powers. The majority removes one of the statute's few remaining limits and increases the burden that a state or local government will face in defending

[498 US 452]

its economic regulation and taxation. With respect, I dissent.

I

The majority must acknowledge, under even Golden State, that not all violations of federal law give rise to a § 1983 action. The plaintiff must assert "rights, privileges, or immunities secured by the Constitution and laws." 42 USC § 1983 [42 USCS § 1983]. The majority appears to base its decision upon three grounds. First, the "ordinary meaning" of the term "right" as confirmed by Black's Law Dictionary indicates that the Commerce Clause provides petitioner a right. Ante, at 447, 112 L Ed 2d, at 978, and n 7. Second, our cases contain scattered references to a "right" to engage in interstate commerce. Ante, at 448, 112 L Ed 2d, at 978-979. And third, the Commerce Clause purportedly meets Golden State's test to determine whether a *statutory* violation gives rise to a § 1983 cause of action, because the Commerce Clause was intended to benefit those who engage in interstate commerce. Ante, at 448-450, 112 L Ed 2d, at 979-980. The majority errs, I must submit, when it ignores what the sponsors of § 1983 told us about the scope of the phrase "rights, privileges or immunities secured by the Constitution," and errs further when it applies the Golden State test in this context. Even were I to apply the majority's various tests, moreover, I would reach the opposite conclusion.

A

The Golden State test, arguably necessary in assessing whether any of the hundreds of statutory provisions that confer express obligations upon the States secure rights within the meaning of § 1983, is not appropriate in this case, where the question is whether a right is secured by a provision of the Constitution. Constitutional provisions are not so numerous, nor enacted with such frequency, that we are compelled to apply an ahistorical test. There is a ready alternative. We can distinguish between those constitutional provisions which secure the rights of persons vis-à-vis the States, and those provisions which allocate power between

[498 US 453]

the Federal and State Governments. The former secure rights within the meaning of § 1983, but the latter do not.

The Commerce Clause, found at Art I, § 8, cl 3, of the Constitution, is a grant of power to Congress. It states simply that "[t]he Congress shall have Power . . . To regulate commerce . . . among the several States." By its own terms as well as its design, as interpreted by this Court, the Commerce Clause is a structural provision allocating authority between federal and state sovereignties. It does not purport to secure rights. The history leading to the drafting and ratification of the Constitution confirms these premises.

The lack of a national power over commerce during the Articles of Confederation led to ongoing disputes among the States, and the prospect of a descent toward even more intense commercial animosity was one of the principal arguments in favor of the Constitution. See, e.g., the Federalist No. 7, pp 62-63 (C. Rossiter ed 1961) (A. Hamilton); id., No. 11, pp 89-90 (A. Hamilton); id., No. 22, pp 143-145 (A. Hamilton); id., No. 42, pp 267-269 (J. Madison); id., No. 53, p 333 (J. Madison).

> "The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was 'to take into consideration the trade of the United States; to examine the relative situations and trade of the said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony.'" H. P. Hood & Sons, Inc. v Du Mond, 336 US 525, 533, 93 L Ed 865, 69 S Ct 657 (1949) (citation omitted).

The Framers intended the Commerce Clause as a way to preserve economic union and to suppress interstate rivalry. The Clause assigned prerogatives to the general government, not personal rights to those who engaged in commerce. See, e.g., id., at 533-535, 93 L Ed 865, 69 S Ct 657; Baldwin v G. A. F. Seelig, Inc., 294 US 511, 523, 79 L Ed 1032, 55 S Ct 497, 101 ALR 55 (1935); Collins, Economic Union as a Constitutional Value, 63 NYUL Rev 43, 51-56 (1988).

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"The necessity of centralized regulation of commerce among the states was so obvious and so fully recognized that the few words of the Commerce Clause were little illuminated by debate." H. P. Hood & Sons, Inc., supra, at 534, 93 L Ed 865, 69 S Ct 657. An exhaustive examination of the debates reports only nine references to interstate commerce in the records of the Convention, all directed at the dangers of interstate rivalry and retaliation. See Abel, The Commerce Clause in the Constitutional Convention and in Contemporary Comment, 25 Minn L Rev 432, 470-471, and nn 169-175 (1941). It is not for serious dispute that the Framers of the Commerce Clause had economic union as their goal, nor that their deliberations are devoid of any evidence of intent to secure personal rights under this Clause.

Section 1983 has its origins in § 2 of the Civil Rights Act of 1866, 14 Stat 27, and § 1 of the Civil Rights Act of 1871, 17 Stat 13. See Lynch v Household Finance Corp. 405 US 538, 543, n 7, 31 L Ed 2d 424, 92 S Ct 1113 (1972). Until recent cases, we have placed great reliance upon the sponsors of the 1871 Act in interpreting the scope of § 1983. See, e.g., Monell v New York City Dept. of Social Services, 436 US 658, 690, 56 L Ed 2d 611, 98 S Ct 2018 (1978) ("[A]nalysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities . . . to be included among those persons to whom § 1983 applies" (emphasis in original)); Lynch, supra, at 545-546, 31 L Ed 2d 424, 92 S Ct 1113 (sponsors intended § 1983 to protect property rights as well as personal rights); Monroe v Pape, 365 US 167, 172-185, 5 L Ed 2d 492, 81 S Ct 473 (1961) (legislative history of § 1983 supports the conclusion that § 1983 plaintiff need not exhaust state remedies).

Those same sponsors of § 1983 understood and announced a distinction between power-allocating and rights-securing provisions of the Constitution. In discussing the meaning of the phrase "rights, privileges or immunities" in the original House version of § 2 of the 1871 Act, Representative Shellabarger, Chairman of the House Select Committee which drafted the Act, and floor manager for the bill, explained:

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> "Most of the provisions of the Constitution which restrain and directly relate to the States, such as those in tenth section of first article, that 'no State shall make a treaty,' 'grant letters of marque,' 'coin money,' 'emit bills of credit,' &c., relate to the divisions of the political powers of the State and General Governments. They do not relate directly to the rights of persons within the States and as between the States and such persons therein. These prohibitions upon the political powers of the States are all of such nature that they can be, and even have been, when the occasion arose, enforced by the courts of the United States declaring void all State acts of encroachment on Federal powers. Thus, and thus sufficiently, has the United States 'enforced' these provisions of the Constitution. But there are some that are not of this class. These are where the court secures the rights or the liabilities of persons within the States, as between such persons and the States.
>
> "These three are: first, that as to fugitives from Justice; second, that as to fugitives from service, (or slaves;) third, that declaring that the 'citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.' " Cong Globe, 42d Cong, 1st Sess, App 69-70 (1871) (hereinafter Cong Globe) (referring to Art IV, § 2, of the Constitution as securing rights of persons).

This passage confirms Representative Shellabarger's view that all but three provisions of the Constitution as first enacted allocate power rather than secure the rights of persons "as between such persons and the States," and that the power-allocating provisions had not been "enforced" by legislation, but instead could be asserted as grounds for invalidating state action. Ibid.[1] To those original provisions which

secure rights of persons with respect to States, and within the meaning of § 1983, the sponsors of § 1983 added the constitutional guarantees contained in the Civil War Amendments, including the provisions of the Bill of Rights incorporated into the Fourteenth Amendment. Every specific mention of rights secured by the 1871 Act refers to these constitutional provisions. See, e.g., Cong Globe 475-476 (Rep. Dawes; privileges and immunities, Bill of Rights); id., at App 84-85 (Rep. Bingham; equal protection, first eight Amendments); id., at App 153 (Rep. Garfield; right to vote, privileges and immunities, equal protection).

Statements of other supporters of the 1871 Act provide further evidence that Congress did not consider the Commerce Clause to secure the rights of persons within the meaning of § 1983. Representative Hoar distinguished between two objectives of the Constitution: to "provide . . . for the protection and regulation of commercial intercourse, domestic and foreign"; and to "promote the general welfare by prohibiting the States from doing what is inconsistent with civil liberty, and compelling them to do what is essential to its maintenance." Cong Globe 333. The 1871 Act was designed to enforce only those provisions of the Constitution providing for "the protection of personal liberty and civil rights," not "the protection of commerce." Ibid. Representative

Trumbull made the same distinction between these categories of constitutional provisions. Id., at 575. The sponsors of § 1983 thus gave us a straightforward answer to the question of which constitutional violations give rise to a § 1983 action, and told us that violations of power-allocating provisions such as the Commerce Clause do not.

Not only did the 42d Congress understand the difference between rights-securing and power-allocating provisions of the Constitution, but this Court's decisions of more than 100 years support the distinction. All previous cases in which this Court has determined (or assumed) that a constitutional violation gives rise to a § 1983 cause of action alleged violations of rights-securing provisions of the Constitution, not power-allocating provisions. See, e.g., Monroe v Pape, 365 US, at 171, 5 L Ed 2d 492, 81 S Ct 473 ("Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirement of R. S. § 1979

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[1] Shellabarger was discussing the power of Congress to enact § 2 of the 1871 Act, and not the scope of § 1, which we know as 42 USC § 1983 [42 USCS § 1983]. Reliance upon Shellabarger's statement is nevertheless appropriate. The proposed § 2 used the phrase "rights, privileges or immunities of another person," Cong Globe App 69, and Shellabarger was discussing his understanding of the rights, privileges, and immunities secured by the Constitution and laws, not of any language which would differ in meaning as between § 1 and § 2 of the 1871 Act. It matters not whether one repeats Shellabarger's speech of many pages, or only the relevant portion thereof, for I do not rely upon Shellabarger's views of congressional power to legislate, but rather the distinction he articulated between power-allocating provisions and rights-conferring provisions, between those provisions which "*do not* relate directly to the rights of persons within the States and as between the States and such persons therein," and those which do "secure" "rights" of persons. Ibid. (emphasis added). Shellabarger's distinction is borne out by the remainder of the legislative history.

[§ 1983]"); Lane v Wilson, 307 US 268, 83 L Ed 1281, 59 S Ct 872 (1939) (Fifteenth Amendment violation supports § 1983 cause of action).

In our only previous case discussing a § 1983 claim brought for the violation of a supposed right secured by Article I of the Constitution, we held that violation of the Contracts Clause does not give rise to a § 1983 cause of action. Carter v Greenhow, 114 US 317, 29 L Ed 202, 5 S Ct 928 (1885). As is true of the Commerce Clause, the Court held that the Contracts Clause can be said to secure individual rights "only indirectly and incidentally." Id., at 322, 29 L Ed 202, 5 S Ct 928. The Court further explained that the only right secured by the Contracts Clause is the "right to have a judicial determination, declaring the nullity of the attempt to impair [a State's] obligation." Ibid.

The Contracts Clause of Art I, § 10, provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." At least such language would provide some support for an argument that the Contracts Clause prohibits States from "doing what is inconsistent with civil liberty."

Cong Globe 333 (Rep. Hoar). If the Contracts Clause, an express limitation upon States' ability to impair the contractual rights of citizens, does not secure rights within the meaning of § 1983, it assuredly demands a great leap for the majority to conclude that the Commerce Clause secures the rights of persons. The Commerce Clause is, if anything, a less obvious source of rights for purposes of § 1983, as its text only implies a limitation upon state power.

At best, all that can be said is that the Commerce Clause grants Congress the power to regulate interstate commerce; from this grant of power, the Court has implied a limitation upon the power of a State to regulate interstate commerce; and in turn, courts provide a person injured by taxation that exceeds the limits of the Commerce Clause the "right to have a judicial determination, declaring the nullity of the attempt to" levy a discriminatory tax. Carter, supra, at 322, 29 L Ed 202, 5 S Ct 928. I find it ironic that Carter draws a distinction of nearly the same character as Golden State, between provisions which directly secure rights and those which do so "only as an incident" of their purpose. Golden State, 493 US, at 109, 107 L Ed 2d 420, 110 S Ct 444. Yet, the majority finds that the Commerce Clause was "intended to benefit the putative plaintiff," Golden State, supra, at 108, 107 L Ed 2d 420, 110 S Ct 444, while Carter held that the Contracts Clause only provides incidental benefits.

In Lynch v Household Finance Corp. 405 US 538, 31 L Ed 2d 424, 92 S Ct 1113 (1972), we rejected an attempt to limit § 1983 to personal rights as opposed to property rights, in that case a deprivation of property in violation of the Due Process Clause of the Fourteenth Amendment. The legislative history of § 1983 did not support such a distinction, and we recognized both its false nature and the impossibility of its application. Today, on the other hand, the Court rejects a distinction which finds strong support in the legislative history of § 1983 and would bring no difficulties of application. I see no good reason for this rejection and suggest that the Court's decision only can do mischief.

B

The majority rejects the weight of historical evidence in favor of scattered statements in our cases that refer to a "right" to engage in interstate commerce. Ante, at 448, 112 L Ed 2d, at 978-979. None of these cases, however, hold that the Commerce Clause secures a personal right. Instead, they interpret the Commerce Clause as allocating power among sovereigns. See Crutcher v Kentucky, 141 US 47, 57, 35 L Ed 649, 11 S Ct 851 (1891) (regulation of interstate commerce "not within the province of state legislation, but within that of national legislation"); Western Union Telegraph Co. v Kansas, 216 US 1, 21, 54 L Ed 355, 30 S Ct 190 (1910) (same). If the majority chooses to rely upon such statements, far removed from the issue at hand, I would remind it that this Court, in a much closer context, has established that a case in which the plaintiff relies upon the dormant Commerce Clause "may be one arising under the Constitution, within the meaning of that term, as used in other statutes, but it is not one brought on account of the deprivation of a right, privilege or immunity secured by the Constitution." Bowman v Chicago & Northwestern R. Co. 115 US 611, 615-616, 29 L Ed 502, 6 S Ct 192 (1885).[2] The statements upon which the majority relies are weak support for its conclusion.

In similar fashion, McKesson Corp. v Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Fla., 496 US 18, 110 L Ed 2d 17, 110 S Ct 2238 (1990), in which the majority finds recent

support for its view of the Commerce Clause, merely applies our traditional due process analysis for deprivation of property to the context of exaction of an unlawful tax. McKesson Corp. holds that if a State insists that taxpayers pay first and obtain review of a tax's validity in a later refund action, then due process requires meaningful postpayment relief for taxes paid pursuant to an unconstitutional scheme. Id., at 31, 110 L Ed 2d 17, 110 S Ct 2238. In discussing the nature of the constitutional violation, McKesson Corp. acknowledges that States are accorded great flexibility in structuring the remedy for a discriminatory tax that violates the Commerce Clause. Rather than refunding the tax, "to the extent consistent with other constitutional restrictions, the State may assess and collect back taxes from petitioner's competitors who benefited from the [discriminatory] rate reductions during the contested tax period." Id., at 40, 110 L Ed 2d 17, 110 S Ct 2238. If the State refused to provide any remedy, then the taxpayer would arguably have a § 1983 claim, but that claim would be for a deprivation of property without due process of law, a violation of the Fourteenth Amendment, not of the Commerce Clause. McKesson Corp. in no way supports the existence of a § 1983 cause of action for Commerce Clause violations.

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[2] The defendant in Bowman had refused to ship the plaintiff's product, relying upon an Iowa statute that prohibited shipment of intoxicating liquors. The plaintiff apparently argued that Iowa's statute violated the Commerce Clause and therefore could not excuse the defendant's failure to perform. The Court's opinion was construing the jurisdictional analogue to § 1983, which permitted appeal without regard to the amount in controversy "in any case brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States." Rev Stat § 699 (1874). See Collins, "Economic Rights," Implied Constitutional Actions, and the Scope of Section 1983, 77 Geo LJ 1493, 1519-1520, 1549-1551 (1989).

Finally, following Golden State, the majority asks whether the provision in question was intended to benefit the putative plaintiff. Ante, at 449, 112 L Ed 2d, at 979-980. The majority fails to locate in the text or history of the Commerce Clause any such intent, but nevertheless concludes that any argument to the contrary was "implicitly rejected in Boston Stock Exchange [v State Tax Comm'n, 429 US,] at 321, n 3 [50 L Ed 2d 514, 97 S Ct 599], where we found that the plaintiffs were arguably within the 'zone of interests' protected by the Commerce Clause." Ante, at 449, 112 L Ed 2d, at 979. I fail to see how a determination that a particular plaintiff is within the "zone of interests" protected by a provision requires a finding that the provision was intended to benefit that plaintiff, or secures a right for purposes of § 1983. To the contrary, our zone of interest cases have rejected any requirement that

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there be a "congressional purpose to benefit the would-be plaintiff." Clarke v Securities Industry Assn., 479 US 388, 399-400, 93 L Ed 2d 757, 107 S Ct 750 (1987). The plaintiff need only demonstrate a "plausible relationship" between his interest and the policies to be advanced by the relevant provision. Id., at 403, 93 L Ed 2d 757, 107 S Ct 750.[3]

The majority's treatment of the question confuses the concept of standing with that of a cause of action. We have considered these as distinct categories and should continue to do so. See Davis v Passman, 442 US 228, 239-240, n 18, 60 L Ed 2d 846, 99 S Ct 2264 (1979). A taxpayer such as petitioner may be arguably within the zone of interests protected by the Commerce Clause. This is not, however, sufficient to demonstrate that the Commerce Clause secures a right of petitioner within the meaning of § 1983. Thus, in INS v Chadha, 462 US 919, 935-936, 77 L Ed 2d 317, 103 S Ct 2764 (1983), we held that an individual had standing to raise a separation of powers challenge alleging a violation of the Presentment Clauses, Art I,

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[3] In a search for evidence that the Commerce Clause was intended to benefit persons who engage in interstate commerce, the majority quotes Morgan v Virginia, 328 US 373, 376-377, 90 L Ed 1317, 66 S Ct 1050, 165 ALR 574 (1946), as stating that "'[c]onstitutional protection against burdens on commerce is for [their] benefit . . . .'" Ante, at 449, 112 L Ed 2d, at 980. The majority's snippet is part of a sentence which, if read in its entirety, does *not* state, as the quotation would make it seem, that the Commerce Clause was intended to benefit those who engage in interstate commerce. Rather, the entire passage is as follows:

"We think, as the Court of Appeals apparently did, that the appellant is a proper person to challenge the validity of this statute as a burden on commerce. If it is an invalid burden, the conviction under it would fail. The statute affects appellant as well as the transportation company. *Constitutional protection against burdens on commerce is for her benefit on a criminal trial for violation of the challenged statute.* Hatch v Reardon, 204 US 152, 160 [51 L Ed 415, 27 S Ct 188 (1970)]; Federation of Labor v McAdory, 325 US 450, 463 [89 L Ed 1725, 65 S Ct 1384 (1945)]." Morgan, supra, at 376-377, 90 L Ed 1317, 66 S Ct 1050, 165 ALR 574 (emphasis added; footnote omitted).

Morgan merely held that a criminal defendant had standing to assert the Commerce Clause as a defense to a prosecution under a Virginia law that required segregation by race of passengers on interstate buses, rejecting the State of Virginia's argument that only the transportation company had standing to challenge the segregation law. 328 US, at 376-377, 90 L Ed 1317, 66 S Ct 1050.

§ 7, cls 2 and 3. In a very **[498 US 462]** fundamental sense, separation of powers is designed to secure individual liberty. Yet, we would not say that the Presentment Clauses secure personal rights. Rather, Chadha was able to assert the interests of the other branches of Government because he met our traditional test of standing.

I cannot doubt the truth of the statement, ante, at 449-450, 112 L Ed 2d, at 979-980 (quoting H. P. Hood & Sons, Inc. v Du Mond, 336 US, at 539, 93 L Ed 865, 69 S Ct 657), that the Commerce Clause benefits individuals and entities engaged in interstate commerce. Nor do I question the importance of our dormant Commerce Clause jurisprudence in guaranteeing a single, national market. Benefits to those engaged in commerce, however, are incidental to the purpose of the Commerce Clause; they are but evidence of its sound application. That the Commerce Clause benefits individual traders or consumers does not satisfy the majority's test that a provision must have been intended for the benefit of a particular plaintiff; nor do such benefits prove that the provision secures a plaintiff's constitutional right to engage in any one activity, to receive any direct benefit, or to avoid any specific detriment. Rather, the Commerce Clause "benefits particular parties only as an incident of" its allocation of power between Federal and State sovereignties. Golden State, 493 US, at 109, 107 L Ed 2d 420, 110 S Ct 444.

I continue to draw the distinction made in my Golden State dissent, id., at 113, 107 L Ed 2d 420, 110 S Ct 444, and would hold that while the dormant Commerce Clause does not secure a right, it gives rise to a legal interest in petitioner against taxation which violates the dormant Commerce Clause. Thus, petitioner can rely upon the unconstitutionality of the tax in defending a collection action brought by the State, or in pursuing state remedies. This ability to invoke the Commerce Clause against a State, however, is not equivalent to finding a secured right under § 1983. If that were so, all violations of federal law would give rise to a § 1983 cause of action, and there would be little reason to search for statements supporting the existence of a right to engage in interstate commerce or to apply the **[498 US 463]** Golden State test. The majority does not purport to rest its decision upon such an all-inclusive view of § 1983, but that is the necessary consequence of its reasoning.

The Court's analysis demonstrates the poverty of the "intended to benefit" test in the constitutional context, for it shows that even structural provisions that benefit individuals incidentally come within its purview. The Court's logic extends far beyond the Commerce Clause, and creates a whole new class of § 1983 suits derived from Article I. For example, the Court's rationale creates a § 1983 cause of action when a State violates the constitutional doctrine of intergovernmental tax immunity, Davis v Michigan Dept. of Treasury, 489 US 803, 813, 103 L Ed 2d 891, 109 S Ct 1500 (1989) (violation of statute "coextensive with the prohibition against discriminatory taxes embodied in the modern constitutional doctrine of intergovernmental tax immunity"), interferes with the federal power over foreign relations, see Zschernig v Miller, 389 US 429, 19 L Ed 2d 683, 88 S Ct 664 (1968), applies a duty upon imports in violation of Art I, § 10, cl 2, see Hooven & Allison Co. v Evatt, 324 US 652, 89 L Ed 1252, 65 S Ct 870 (1945), invades the federal power over regulation of the entrance and residence of aliens in violation of Art I, § 8, cl 4, see Hines v Davidowitz, 312 US 52, 66-67, 85 L Ed 581, 61 S Ct 399 (1941), or attempts to tax income upon a federal obligation in derogation of Congress' Art I, § 8, cl 2, power to "borrow Money on the credit of the United States," see Missouri ex rel. Missouri Ins. Co. v Gehner, 281 US 313, 74 L Ed 870, 50 S Ct 326 (1930). There is no textual or other support for holding that § 1983 imposes such far-reaching liabilities upon the States.

II

Petitioner here does not complain that the State of Nebraska has failed to provide him an adequate forum in which to contest the validity of Nebraska's tax. Nebraska has done so. The Nebraska courts acknowledged the invalidity of the State's tax, enjoined its collection, and directed petitioner to file a refund claim for the taxes he had paid to the

State. Rather, the significance of the Court's decision, in this and future Commerce Clause litigation, is that a § 1983 claim may permit dormant Commerce Clause plaintiffs to recover attorney's fees and expenses under 42 USC § 1988 [42 USCS § 1988].

In the Civil Rights Attorney's Fees Awards Act of 1976, Pub L 94-559, 90 Stat 2641, codified at 42 USC § 1988 [42 USCS § 1988], Congress authorized the award of attorney's fees to prevailing parties in, inter alia, § 1983 litigation. The award of attorney's fees encourages vindication of federal rights which, Congress recognized, might otherwise go unenforced because of the plaintiffs' lack of resources and the small size of any expected monetary recovery. See S Rep No. 94-1011, p 6 (1976). Congress was reassured that § 1988 would be "limited to cases arising under our civil rights laws, a category of cases in which attorneys fees have been traditionally regarded as appropriate." Id., at 4.

The significant economic interests at stake in dormant Commerce Clause cases, as well as the resources available to the typical dormant Commerce Clause plaintiff, make such concerns far removed from the realities of dormant Commerce Clause litigation. The pages of the United States Reports testify to the ability of major corporations and industry associations to commence and maintain dormant Commerce Clause litigation without receiving attorney's fee awards under § 1988. By making such fee awards available, the Court does not vindicate the purposes of § 1983 or § 1988, but merely shifts the balance of power away from the States and toward interstate businesses.

Today's decision raises far more questions about the proper conduct of challenges to the validity of state taxation than it answers. The Tax Injunction Act, 28 USC § 1341 [28 USCS § 1341], prevents any attempt in federal court to "enjoin, suspend or restrain" assessment or collection of a state tax, so long as "a plain, speedy and efficient remedy may be had in the courts of such State." The principle of comity likewise prevents a federal court from entertaining any action for damages under

§ 1983 to redress allegedly unconstitutional state taxation. Fair Assessment in Real Estate Assn., Inc. v McNary, 454 US 100, 70 L Ed 2d 271, 102 S Ct 177 (1981). Relying upon the "overriding interests of the state in an efficient, expeditious and nondisruptive resolution of . . . tax disputes," Backus v Chilivis, 236 Ga 500, 505, 224 SE2d 370, 374 (1976), state courts have refused to permit plaintiffs to proceed under § 1983 where there exists a complete remedy under state law. Ibid.; Spencer v South Carolina Tax Comm'n, 281 SC 492, 497, 316 SE2d 386, 388-389 (1984), aff'd by an equally divided Court, 471 US 82, 85 L Ed 2d 62, 105 S Ct 1859 (1985) (per curiam). These questions now become of paramount importance, as we risk destruction of state fiscal integrity in a manner which may require congressional correction.

Today's opinion gives no hint of § 1983's character as an extraordinary remedy passed during Reconstruction to protect basic civil rights against oppressive state action. Section 1983 now becomes simply one more weapon in the litigant's arsenal, to be considered whenever the defendant is a state actor and its use is advantageous to the plaintiff. I dissent from the opinion and judgment of the Court.

[498 US 466]

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, et al., Petitioners

v

TIMOTHY A. BROWN

498 US 466, 112 L Ed 2d 991, 111 S Ct 880

[No. 89-1330]

Argued November 27, 1990. Decided February 20, 1991.

Decision: Courts held not required by 29 USCS § 481(c) to evaluate reasonableness of labor union's election campaign rule before deciding whether candidate's request for distribution of campaign literature is reasonable.

SUMMARY

A labor union member who twice had been an unsuccessful candidate for union office formally advised the union that he would be a candidate in the union's upcoming election and requested that the union provide him with mailing labels containing the names and addresses of voting union members so that he could arrange, at his own expense, to mail campaign literature to the members prior to the union's nominating convention. The union denied the request because a union rule prohibited such preconvention mailing. Subsequently, the member filed an action under § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c)) —which requires a labor union to comply with all reasonable requests, from any bona fide candidate for union office, to distribute, at the candidate's expense, campaign literature from the candidate to all union members in good standing. The United States District Court for the District of Maryland, entering a preliminary injunction against the union's denial of the member's request, held that (1) the clear language of § 401(c) required the court to focus on the reasonableness of the member's request rather than on the reasonableness of the union rule under which the request had been denied, (2) the request was reasonable, and (3) a union rule whose application resulted in the rejection of such a request was invalid. The United Court of Appeals for the Fourth Circuit, holding that the question whether the member's request should have been granted depended entirely on

Briefs of Counsel, p 1274, infra.

whether the request was reasonable, affirmed the District Court's judgment (857 F2d 216, adhered to on rehearing en banc 889 F2d 58).

On certiorari, the United States Supreme Court affirmed. In an opinion by Stevens, J., expressing the unanimous view of the court, it was held, in the absence of any showing by the union as to the unreasonableness of the member's request, that the request was reasonable and had to be granted, because § 401(c) did not require a court to evaluate the reasonableness of the union rule before deciding whether the member's request was reasonable, since the text, structure, and purpose of the LMRDA's Title IV (29 USCS §§ 481 et seq.) indicated that § 401(c) prescribed a straightforward test requiring determination of the reasonableness of a candidate's distribution request rather than the reasonableness of a union rule curtailing the period in which campaign literature could be mailed, where (1) § 401(c) plainly required unions to comply with "all reasonable requests" and, just as plainly, did not require union members to comply with all reasonable rules when making such requests, (2) Congress had given candidates' § 401(c) right a special unqualified status that Congress has not conferred upon other rights granted to union members under the LMRDA, and (3) a broad interpretation of a candidate's right to distribute literature commenting on the positions advocated in the union press was consistent with Title IV's basic purpose of insuring free and democratic union elections by offsetting the inherent advantage over potential rank and file challengers possessed by incumbent union leadership.

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48 Am Jur 2d, Labor and Labor Relations §§ 80, 127-138

23 Federal Procedure, L Ed, Labor and Labor Relations §§ 52:724-52:727

12A Federal Procedural Forms, L Ed, Labor and Labor Relations §§ 46:383-46:390, 46:403, 46:407, 46:409

16 Am Jur Pl & Pr Forms (Rev), Labor and Labor Relations, Forms 361-364

16 Am Jur Proof of Facts 497, Union Election Practices

29 USCS §§ 481 et seq., 481(c)

RIA Employment Coordinator ¶¶ LR-47,610, LR-47,612, LR-47,616, LR-47,627, LR-47,640, LR-47,641, LR-47,645, LR-47,-646

RIA Employment Discrimination Coordinator ¶ 39,166

L Ed Digest, Labor § 13

L Ed Index, Elections and Voting; Labor and Employment

Index to Annotations, Elections and Voting; Labor and Employment; Labor-Management Reporting and Disclosure Act

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

What circumstances render civil case, or issues arising therein, moot so as to preclude Supreme Court's consideration of their merits. 44 L Ed 2d 719.

Validity, construction, and application of § 504 of Labor-Management Reporting and Disclosure Act (29 USCS § 504), precluding certain convicted persons from serving in union office for specified period. 98 ALR Fed 481.

Prohibition of contribution of moneys of employer to promote candidates in union election under § 401(g) of Labor-Management Reporting and Disclosure Act of 1959 (29 USCS § 481(g)). 53 ALR Fed 585.

Reasonableness of qualifications for union office under § 401(e) of Labor-Management Reporting and Disclosure Act (29 USCS § 481(e)). 24 ALR Fed 651.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Labor § 13; Statutes §§ 102, 103, 108.5, 164 — election of union officers — distribution of campaign literature

1a-1e. Section 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c))—which requires a labor union to comply with all reasonable requests, from any bona fide candidate for union office, to distribute, at the candidate's expense, campaign literature from the candidate to all union members in good standing—does not require a court to evaluate the reasonableness of a union rule prohibiting the mailing of campaign literature in advance of the union's nominating convention before the court decides whether a candidate's request for such an advance mailing is reasonable, because the text, structure, and purpose of the LMRDA's Title IV (29 USCS §§ 481 et seq.) indicate that § 401(c) prescribes a straightforward test requiring determination of the reasonableness of a candidate's distribution request rather than the reasonableness of a union rule curtailing the period in which campaign literature may be mailed, since (1) the language of § 401(c) plainly requires unions to comply with "all reasonable requests" and, just as plainly, does not require union members to comply with all reasonable rules when making such requests, (2) Congress has given candidates' § 401(c) right a special unqualified status that Congress has not conferred upon other rights granted to union members under the LMRDA, where other rights created by Title IV are expressly made subject to reasonable union rules and—in contrast to the § 401(c) right being enforceable in a action brought by an individual union member—are enforceable in actions brought by only the Secretary of Labor, and (3) a broad interpretation of a candidate's right to distribute literature commenting on the positions advocated in the union press is consistent with Title IV's basic purpose of insuring free and democratic union elections by offsetting the inherent advantage over potential rank and file challengers possessed by incumbent union leadership, which controls the union newspaper; thus, in the absence of any showing, by a union whose rule prohibits the mailing of campaign literature in advance of the union's nominating convention, as to the unreasonableness of a request by a bona fide candidate for union office that the union provide the candidate with mailing labels containing the names and addresses of voting union members so that the candidate can arrange to distribute the candidate's campaign literature to union members prior to the nominating convention at the candidate's expense, the request is reasonable and must be granted.

Courts § 763 — moot questions

2. A controversy as to the reasonableness of a candidate's request under § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c))—which requires a labor union to comply with all reasonable requests, from any bona fide candidate for union office, to distribute, at the candidate's expense, campaign literature from the candidate to all union members in good standing—that the union, which has a rule against

distributing campaign literature in advance of its nominating convention, provide the candidate with mailing labels containing the names and addresses of voting members so that the candidate can arrange to distribute the candidate's campaign literature in advance of the convention, is not mooted by the facts that the literature has been distributed and the candidate has lost the election by a small margin, because the likelihood that the union rule will again present an obstacle to a preconvention mailing by the candidate makes this controversy sufficiently capable of repetition to preserve the court's jurisdiction, where the candidate has run for union office before and may well do so again.

Labor § 13; Statutes §§ 91, 102, 103, 200 — union office — bona fide candidate

3. Even though the candidacy of a union member who has formally advised the union that the member will be a candidate for union office in an upcoming election has not been certified at a meeting of the union ballot committee subsequent to the union's nominating convention in accordance with the union's formal election procedures, the member is a "bona fide candidate for office" within the meaning of § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c))—which requires a labor union to comply with all reasonable requests, from any bona fide candidate for union office, to distribute campaign literature from the candidate to union members—when the candidate makes a preconvention request to distribute campaign literature, because Congress did not intend that the "reasonable qualifications" authorization in § 401(e) of the LMRDA (29 USCS § 481(e))—which guarantees the right of every union member in good standing to be a candidate for union office subject to reasonable qualifications uniformly imposed by the union—be given a broad reach, since (1) unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb, (2) the check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents, and (3) it follows, therefore, that whether a particular union rule is a reasonable qualification within the meaning of § 401(e) must be measured in terms of the rule's consistency with the LMRDA's command to unions to conduct free and democratic elections.

Labor § 13 — union office — distribution of campaign literature — reasonable request

4. Apart from the fact that a request by a candidate for union office —that, prior to the union's nominating convention, the union provide the candidate with mailing labels containing the names and addresses of voting members so that the candidate can arrange to mail the candidate's campaign literature to union members—violates the union rule against such preconvention mailings, there is no basis for contending that the candidate's request is not reasonable within the meaning of § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c)), which requires a union to comply with all reasonable requests, from a candidate for union office, to distribute campaign litera-

ture, at the candidate's expense, to union members, where no question has been raised about the candidate's responsibility for the cost of the mailing or about any administrative problem in complying with the candidate's request; the sole issue is whether the union rule renders an otherwise reasonable request unreasonable.

Statutes § 108.5 — language included and omitted

5a, 5b. Where Congress includes particular language in one section of a statute but omits it in another section of the same statute, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

Labor § 13 — union office — mailing of campaign literature — reasonable request — union rules

6. Under § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 USCS § 481(c))—which requires a union to comply with all reasonable requests, from a candidate for union office, to distribute campaign literature, at the candidate's expense, to union members—a candidate's request that a union provide the candidate with mailing labels containing the names and addresses of voting members so that the candidate can arrange to mail the candidate's campaign literature prior to the union's nominating convention, is not rendered unreasonable by failure to comply with a nondiscriminatory union rule that has been adopted through democratic procedures and prohibits the preconvention mailing of campaign literature because, although the justifications—uniformity of treatment and reduction of administrative burdens—and the fair notice provided to candidates by the existence and publication of rules that establish the procedures for making mailing requests, selecting a mailing agent, and paying the cost of mailing, all would be relevant in determining whether a request is reasonable, these concerns in no way dictate a rule prohibiting mailings before a nominating convention.

SYLLABUS BY REPORTER OF DECISIONS

Respondent, an unsuccessful candidate in prior elections of petitioner Union, advised the Union that he would be a candidate in the upcoming 1988 election and requested that he be provided with mailing labels so that he could arrange for a timely mailing of election literature to members prior to the Union's nominating convention. The request was denied because a Union rule prohibited such preconvention mailings. Respondent filed suit under § 401(c) of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), which places every union "under a duty, enforceable at the suit of any bona fide candidate . . . , to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature . . . ." The District Court entered a preliminary injunction in respondent's favor, ruling, inter alia, that § 401(c)'s clear language required it to focus on the reasonableness of respondent's request rather than on the reasonableness of the Union rule under which the request was denied, that the request was clearly reasonable, and, alternatively, that the Union rule was invalid. The Court of Appeals affirmed.

Held: Section 401(c) does not require a court to evaluate the reasonableness of a union rule before it decides whether a candidate's request was reasonable.

(a) It is undisputed, first, that the case is not moot even though respondent's campaign literature has been distributed and he lost the 1988 election because he has run for office before and may well do so again, and the likelihood that the Union rule would again present an obstacle to his preconvention mailing makes this controversy sufficiently capable of repetition to preserve this Court's jurisdiction; second, that respondent was a "bona fide candidate" within § 401(c)'s meaning when he made his preconvention request; and, third, that there is no basis for contending that the request was not "reasonable" under § 401(c) apart from the fact that it violated the Union rule.

(b) The text, structure, and purpose of Title IV of the LMRDA all demonstrate that § 401(c) simply prescribes a straightforward test: Is the candidate's distribution request reasonable? The section's language plainly requires unions to comply with "*all* reasonable requests" (emphasis added), and just as plainly does *not* require union members to comply with "all reasonable rules" when making such requests. Moreover, Congress gave the candidate's § 401(c) right a special status not conferred upon other Title IV rights granted union members, which are expressly made subject to "reasonable" conditions imposed by unions and are judicially enforceable only in actions brought by the Secretary of Labor. A broad interpretation of the candidate's right also is consistent with the statute's basic purpose of ensuring free and democratic union elections by offsetting the inherent advantage incumbent union leadership has over potential rank and file challengers. Furthermore, the Union's arguments supporting its position that a request is per se unreasonable simply because it conflicts with a union rule are unpersuasive. The Union does not advance any other reason for suggesting that respondent's request was unreasonable; thus, the request must be granted.

889 F2d 58, affirmed.

Stevens, J., delivered the opinion for a unanimous Court.

APPEARANCES OF COUNSEL

W. Michael Pierson argued the cause for petitioners.

Paul Alan Levy argued the cause for respondent.

James A. Feldman argued the cause for the United States as amicus curiae supporting respondent, by special leave of court.

Briefs of Counsel, p 1274, infra.

OPINION OF THE COURT

[498 US 467]

Justice **Stevens** delivered the opinion of the Court.

[1a] Labor unions have a statutory duty to distribute campaign literature to their membership in response to the reasonable request of any candidate for union office. In this case the union denied such a request because the candidate wanted

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the literature mailed in advance of the union's nominating convention and a union rule prohibited such preconvention mailing. The question presented is whether a court must evaluate the reasonableness of the union's rule before it decides whether the candidate's request was reasonable. Like the Court of Appeals and the District Court, we conclude that the statute requires us to give a negative answer to that question.

I

The International Organization of Masters, Mates & Pilots (Union) represents about 8,500 members employed in, or in work related to, the maritime industry. Many of the members are away from home for extended periods of time because they work on ships that ply the high seas. Elections of Union officers are conducted every four years by means of a mail ballot. An international ballot committee, which oversees the election, is elected at the convention, and an impartial balloting agency, which conducts the balloting, is also selected by the delegates at the convention. App 36, 25-26. The ballots are mailed to the membership no later than 30 days[1] after the convention at which candidates are nominated, and must be returned within the ensuing 90-day period. Union rules authorize the mailing of campaign literature at the candidate's expense after nominations have been made but not before.[2] Any Union member in good standing

may be a candidate; moreover, a candidate may nominate himself.

Respondent was an unsuccessful candidate for Union office in 1980 and 1984. On May 9, 1988, he formally advised the international secretary-treasurer of the Union that he would be a candidate in the election to be held in the fall and requested that the Union provide him with mailing labels containing the names and addresses of voting Union members to be given to a mailing service so that he could arrange, at his own expense, for a timely mailing of "election literature prior to the Convention." Id., at 41.

On June 2, 1988, respondent wrote to the international president of the Union advising him that he would be a candidate for that office, that he intended to send his first mailing to the membership on July 6, and that he had not "had the courtesy of a reply" to his earlier letter to the secretary-treasurer. Id., at 43. Five days later, the secretary-treasurer provided respondent with the following explanation as to why his request could not be accommodated:

> "Although I can understand your eagerness in wanting to send out your campaign literature

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[1] In the 1980 and 1984 Union elections, the ballots were mailed on the 30th day. App 57.

[2] An affidavit of the international president of the Union describes the procedure:

"The procedure followed under the IOMM&P Constitution for distribution of campaign literature does not permit access to the mailing list for distribution until after nominations have been made. No candidate, including incumbents, may use the mailing list for this purpose before this time. The International Ballot Committee meets after the close of the convention and reviews the qualifications of candidates to ensure their eligibility. Candidates are required to accept nomination within ten days and to certify that they are not prevented from holding office (Article V, section 5). Once all candidates are certified, the Impartial Balloting Agency notifies all candidates at the same time of the conditions for distribution of literature. The mailing agency is selected by the Impartial Balloting Agency and is not the same mailing agency used for other communications to members." Id., at 60-61.

early, please be advised that as soon as the rules are established for mailing campaign literature, all candidates will be notified at the same time.

"As the practice has been in the past, and the Constitution prescribes, the IOMM&P Convention is the event in which all candidates officially are nominated to run for a particular office. Only after the Convention takes place, and when the Impartial Balloting Agency is designated, will the mailing agency to handle campaign

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literature be designated. Please refer to Article V, Section 10 of the International Constitution. This procedure has been established so that each candidate will have a fair and equal amount of time in which to adequately reach the membership and to prohibit any one candidate from having an edge over the other." Id., at 44-45.

On June 15, respondent appealed that denial to the Union general executive board,[3] repeating his desire for action by July 5. Id., at 46. On July 6, the General Executive Board denied his appeal. Five days later, respondent filed this action under § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat 532, 29 USC § 481(c) [29 USCS § 481(c)].[4] In his complaint, respondent alleged that the convention

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was scheduled to begin on August 22 and that he wanted "to encourage the membership to begin consideration of his candidacy and of the issues he hope[d] to raise during his campaign before the deadline for making nominations, both in order to persuade the membership that he should be nominated and elected, and to attract support from individuals who might otherwise be inclined to run for office themselves or to encourage other members to do so." App 8-9.[5]

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[3] Between conventions, the Union is governed by a general executive board, consisting of the international officers and the vice presidents. Id., at 18-19.

[4] Section 401(c) of the LMRDA provides:
"Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, *to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization* and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots." 29 USC § 481(c) [29 USCS § 481(c)] (emphasis added).

[5] A few days after the lawsuit was filed, a representative of the Department of Labor wrote letters to both parties expressing the view that the Union's denial of respondent's request violated § 401(c) and was therefore unlawful. See App 52-54; see also Brief for United States as Amicus Curiae 4.

Two weeks later, after both sides had filed affidavits and a hearing had been held, the District Court entered a preliminary injunction directing the Union and its two main officers "within forty-eight hours, and again in response to any future requests" to deliver the names and addresses of the Union members to a mailing service acceptable to the parties. Id., at 74. The order also provided that respondent should pay for the costs of the mailing service. Id., at 74-75. The District Court based its decision on alternative grounds. First, it held that the clear language of § 401(c) required it to focus on the reasonableness of respondent's request rather than on the reasonableness of the Union rule under which the request was denied. In addition, the District Court concluded that the request to make a campaign distribution approximately one month before the convention was "clearly reasonable," and that if the application of a Union rule resulted in the rejection of such a request, the rule was invalid. Id., at 77.

Second, and alternatively, the District Court held that even if the standard of review is the reasonableness of the

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Union rule, rather than the reasonableness of respondent's request, the rule was unreasonable because preconvention campaigning was essential to introducing a candidate and his ideas to Union members and because the postconvention ballot period of 90 days was inadequate for effective campaigning in a Union whose members' work kept them away from home for substantial periods of time. Id., at 77-78.

The United States Court of Appeals for the Fourth Circuit affirmed. Brown v Lowen, 857 F2d 216 (1988).[6] The majority held that the question whether respondent was entitled to have his request granted depended "entirely on whether his request may be said to be reasonable." Id., at 217. This conclusion involved "nothing more than a reading of the plain language of the statute," ibid., and was buttressed by the statutory purpose of ensuring Union democracy:

> "When the union bureaucracy has exclusive control of the union membership lists, with addresses, as in this case, and that bureaucracy has continuous contact with the union membership and particularly the local union officers, the advantages of incumbency over any attempt of an insurgent to promote his candidacy before or after the quadrennial nominating convention of the union are obvious. By requiring unions to comply with all reasonable requests of candidates for access to the union lists these advantages of incumbency are reasonably moderated. And it was to provide that very moderation of the advantages of incumbency which was the intention of the Act." Id., at 218.

The majority found nothing unreasonable in respondent's request and rejected the Union's argument that it could limit the time in which literature could be distributed in order to

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[6] The Court of Appeals explained that "[alt]hough the order of the district judge related to an application for a preliminary injunction, the granting of the motion in effect constituted a decision on the merits," and thus, it reviewed the case on the merits, and "affirm[ed] the decision of the district court as one on the merits." 857 F2d, at 216.

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avoid discrimination, "since any candidate, whether an incumbent or an insurgent, has the same rights as the plaintiff." Ibid.

The dissenting judge found nothing unreasonable or discriminatory in the Union's election procedures. According to the dissent, a candidate's request that did not conform to a reasonable union rule was itself "per se unreasonable." Id., at 219. After a rehearing en banc,[7] by a vote of 8 to 2, the Court of Appeals adopted the majority's holding and affirmed the District Court. Brown v Lowen, 889 F2d 58 (1989) (per curiam). We granted certiorari, 496 US 935, 110 L Ed 2d 659, 110 S Ct 3211 (1990), to resolve the conflict between the Fourth Circuit's decision in this case and an earlier decision by the Third Circuit in Donovan v Metropolitan District Council of Carpenters, 797 F2d 140 (1986).

II

[2] Three important propositions are undisputed. First, even though respondent's campaign literature has been distributed and even though he lost the election by a small margin, the case is not moot. Respondent has run for office before and may well do so again.[8] The likelihood that the Union's rule would again present an obstacle to a preconvention mailing by respondent makes this controversy sufficiently capable of repetition to preserve our jurisdiction. See, e.g., Moore v Ogilvie, 394 US 814, 816, 23 L Ed 2d 1, 89 S Ct 1493 (1969) ("The problem is therefore 'capable of repetition, yet evading review,' Southern Pacific Terminal Co. v Interstate Commerce Commission, 219 US 498, 515 [55 L Ed 310, 31 S Ct 279] [(1911)]").

[498 US 474]

[3] Second, even though respondent's candidacy had not been certified at a postconvention meeting of the Union impartial ballot committee in accordance with the Union's formal election procedures, it is clear that respondent was a "bona fide candidate for office" within the meaning of the statute when he made his preconvention request to distribute campaign literature. 29 USC § 481(c) [29 USCS § 481(c)]. Section 401(e) of the LMRDA guarantees the right of every union member in good standing to be a candidate subject to the "reasonable qualifications uniformly imposed" by the Union.[9] The Union, in accordance with our opinions in Wirtz v Hotel

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[7] Although the Secretary of Labor had not participated in any of the earlier stages of this litigation, she filed a brief as amicus curiae in support of respondent and participated in oral argument before the en banc panel.

[8] Indeed, because of irregularities in the conduct of the 1988 election, the Secretary of Labor has persuaded the District Court to order a new election. Respondent remains a candidate for the office of international president in that election. However, presumably at this time no question concerning preconvention mailings remains open in connection with the 1988 election.

[9] Section 401(e) provides in relevant part:

"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." 29 USC § 481(e) [29 USCS § 481(e)].

Employees, 391 US 492, 20 L Ed 2d 763, 88 S Ct 1743 (1968), and Steelworkers v Usery, 429 US 305, 50 L Ed 2d 502, 97 S Ct 611 (1977), does not contend that it would be reasonable to refuse to recognize an eligible candidate until after the nominating process is completed. As we explained in Wirtz:

> "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office . . . .' This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which
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> [498 US 475]
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> substantially deplete the ranks of those who might run in opposition to incumbents.
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> "It follows therefore that whether the Local 6 bylaw is a 'reasonable qualification' within the meaning of § 401(e) must be measured in terms of its consistency with the Act's command to unions to conduct 'free and democratic' union elections." 391 US, at 499, 20 L Ed 2d 763, 88 S Ct 1743 (footnote omitted).

[4] Third, apart from the fact that respondent's request violated the Union rule against preconvention mailings, there is no basis for contending that the request was not "reasonable" within the meaning of § 401(c). No question is raised about respondent's responsibility for the cost of the mailing or about any administrative problem in complying with his request. The sole issue is whether the Union rule rendered an otherwise reasonable request unreasonable.

III

[1b, 5a] The text, structure, and purpose of Title IV of the LMRDA all support the conclusion that our inquiry should focus primarily on the reasonableness of the candidate's request rather than on the reasonableness of the Union's rule curtailing the period in which campaign literature may be mailed.

[1c] The language of § 401(c) explicitly instructs the Union and its officers "to comply with *all* reasonable requests of *any candidate* to distribute by mail or otherwise at the candidate's expense campaign literature. . . ." 29 USC § 481(c) [29 USCS § 481(c)] (emphasis added). The language of the statute plainly requires unions to comply with "all reasonable requests," and just as plainly does *not* require union members to comply with "all reasonable rules" when making such requests. Unlike the member's right to run for union office, which is created by § 401(e) and made expressly subject to the "reasonable qualifications uniformly imposed" by the Union, and unlike the member's speech and voting rights, which are governed by sections of the LMRDA such as

[498 US 476]

§§ 101(a)(1) and 101(a)(2), 29 USC §§ 411(a)(1) and 411(a)(2) [29 USCS §§ 411(a)(1) and 411(a)(2)], and are made "subject to reasonable rules" in the Union constitution, the

§ 401(c) right is unqualified.[10] Moreover, unlike other rights created by Title IV that are judicially enforceable only in actions brought by the Secretary of Labor, the § 401(c) right is directly enforceable in an action brought by the individual Union member. Thus, as the language of the statute suggests, Congress gave this right pertaining to campaign literature a special status that it did not confer upon other rights it granted to Union members.

[1d] The special purpose of Title IV was to ensure free and democratic union elections. See Wirtz v Glass Bottle Blowers, 389 US 463, 470, 19 L Ed 2d 705, 88 S Ct 643 (1968). The statutory guarantees are specifically designed to offset the "inherent advantage over potential rank and file challengers" possessed by incumbent union leadership. Id., at 474, 19 L Ed 2d 705, 88 S Ct 643. One of the advantages identified by Archibald Cox in his testimony in support of the Act is the incumbents' control of "the union newspaper which is the chief vehicle for communication with the members."[11] A broad interpretation of the candidate's right to distribute literature commenting on the positions advocated in the union press is consistent with the statute's basic purpose.

[6] The Union advances three related arguments in support of its position that mailing requests should be considered unreasonable if they do not comply with nondiscriminatory rules

that have been adopted through democratic procedures. First, the Union correctly notes that any fair election must be conducted in accordance with predetermined rules, and that the reasonableness of any election- related request must be evaluated in view of those rules. Second, it argues that the rule at issue furthers its duty to avoid discrimination in the conduct of the election. Third, it relies on the congressional policy of avoiding unnecessary intervention in the internal affairs of labor unions.

We find these arguments unpersuasive. Rules must, of course, be adopted to govern the process of nominating candidates, casting ballots, and counting votes. Moreover, in connection with the process of distributing campaign literature to the membership, rules that establish the procedures for making mailing requests, selecting a mailing agent, and paying the cost of the mailing are no doubt desirable. The justifications underlying such rules (uniformity of treatment, reduction of administrative burdens) and the fair notice provided to candidates by the existence and publication of such rules all would be relevant in determining whether a request is reasonable. But these concerns in no way dictate a rule prohibiting mailings before a nominating convention. Here, in particular, a preconvention mailing would not place any burden on the Union because the candidate must assume the cost of the mailing. Moreover, in union elections, as in political elections, it is fair to assume that more, rather than less, freedom in the exchange of views will contribute to the democratic process. Here, respondent, by his request for a preconvention mailing, hoped to provide Union members with "more information" with which to inform their voting decisions. App 14.

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[10] **[5b]** "'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" Russello v United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct 296 (1983) (quoting United States v Wong Kim Bo, 472 F2d 720, 722 (CA5 1972)); see General Motors Corp. v United States, 496 US 530, 537-538, 541, 110 L Ed 2d 480, 110 S Ct 2528 (1990).

[11] Hearings on S 505 et al. before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong, 1st Sess, 134 (1959). Consistent with Archibald Cox's observations, the Union newspaper here was also "the principal and only regular source of news which members have about union affairs." App 13.

The concern about discrimination among individual candidates is surely satisfied by a rule that allows any candidate access to the membership before the convention as well as by a rule that denies all candidates such access. Indeed, arguably opening the channels of communication to all candidates

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as soon as possible better serves the interest in leveling the playing field because it offsets the inherent advantage that incumbents and their allies may possess through their control of the union press and the electoral lists during the four years in which they have been in office.

The policy of avoiding unnecessary intervention into internal union affairs is reflected in several provisions of the LMRDA. We have already referred to the fact that the right to hold union office protected by § 401(e) is "subject to . . . reasonable qualifications uniformly imposed." 29 USC § 481(e) [29 USCS § 481(e)]. Similarly, the provision in § 101(a)(1) of the LMRDA, 29 USC § 411(a)(1) [29 USCS § 411(a)(1)], governing the right to nominate candidates, to vote in elections, and to attend union meetings is expressly made subject to the union's "reasonable rules and regulations." Moreover, the member's right to speak freely at union meetings is "subject to the organization's established and reasonable rules pertaining to the conduct of meetings." 29 USC § 411(a)(2) [29 USCS § 411(a)(2)]. These expressions of respect for internal union rules are notably absent in § 401(c).

[1e] Section 401(c) simply prescribes a straightforward test: Is the candidate's distribution request reasonable? Having dispensed with the Union's argument that a request is per se unreasonable simply because it conflicts with a union rule, we need only note again that in this case the Union does not advance any other reason for suggesting that respondent's request was unreasonable. The Union does not contend, for example, that respondent's request caused administrative or financial hardship to the Union or that it discriminated against any other candidate. In the absence of any showing by the Union as to the unreasonableness of the request, we hold, consistent with the lower courts' findings, that respondent's request was reasonable and must be granted.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

[498 US 479]

GENE McNARY, Commissioner of Immigration and Naturalization, et al., Petitioners

v

HAITIAN REFUGEE CENTER, INC., et al.

498 US 479, 112 L Ed 2d 1005, 111 S Ct 888

[No. 89-1332]

Argued October 29, 1990. Decided February 20, 1991.

Decision: District Court held not precluded by 8 USCS § 1160(e) from exercising jurisdiction over action alleging due process violations by INS in administration of amnesty program for alien farmworkers.

SUMMARY

An amnesty program established for illegal aliens by the Immigration Reform and Control Act of 1986 (IRCA) requires an adjustment in the status of any alien farmworker to "Special Agricultural Worker" (SAW) if the alien can establish that he or she (1) has resided in the United States and performed at least 90 days of qualifying agricultural work during the 12-month period prior to May 1, 1986, and (2) is admissible in the United States as an immigrant. Regulations adopted by the Immigration and Naturalization Service (INS) to administer the SAW program provided for a personal interview of each applicant. With regard to the SAW program, § 210(e) of the Immigration and Nationality Act (8 USCS § 1160(e)) provided that judicial review of "a determination respecting an application for adjustment of status" was permitted only with respect to deportation orders. Subsequent to the initiation of the SAW program, an action was brought in the United States District Court for the Southern District of Florida by unsuccessful individual SAW applicants and by organizations which provided legal representation and other services to immigrants, which parties alleged that the interview process was conducted by the INS in an arbitrary fashion that, in a number of aspects, deprived applicants of due process in violation of the Federal Constitution's Fifth Amendment. The District Court —while recognizing that under § 210(e), individual aliens could not contest the denial of their SAW applications until the INS instituted deportation proceedings against them—nevertheless accepted jurisdiction because the

Briefs of Counsel, p 1275, infra.

complaint did not challenge any individual determination of any application for SAW status, but rather attacked the manner in which the entire program was being implemented (694 F Supp 864). The District Court also ruled against the INS on the merits. On appeal, the United States Court of Appeals for the Eleventh Circuit, affirming, upheld the District Court's assertion of jurisdiction (872 F2d 1555).

On certiorari, the United States Supreme Court affirmed. In an opinion by Stevens, J., joined by Marshall, Blackmun, O'Connor, Kennedy, and Souter, JJ., and joined in part (all but point 4 below) by White, J., it was held that the District Court was not precluded by § 210(e) from exercising federal question jurisdiction to hear the action, because (1) the language of § 210(e) applied to only review of denials of individual SAW applications, and such language did not refer to general collateral challenges to unconstitutional practices and policies used by the INS in processing applications; (2) such reading was supported by the language of § 210(e)(3)(B), in its provisions (a) that judicial review "shall be based solely upon the administrative record established at the time of the review by the appellate authority," since this language incorporated an assumption that the limited review provisions of § 210(e) applied to only claims that have been subjected to administrative consideration and that have resulted in the creation of an adequate record, and (b) for an "abuse of discretion" standard of judicial review, since constitutional or statutory claims were reviewed de novo by the courts and thus it would make no sense to require that constitutional and statutory challenges to INS procedures be subject to the specialized review procedures of § 210(e); (3) Congress could have used broader statutory language if it had intended that the limited review provisions of § 210(e) encompass challenges to INS procedures and practices; and (4) meaningful judicial review of challengers' statutory and constitutional claims would be foreclosed if they were required to avail themselves of § 210(e)'s limited procedures for judicial review of INS action.

Rehnquist, Ch. J., joined by Scalia, J., dissenting, expressed the view that (1) in light of the settled rule that agency actions short of final administrative decisions are not generally subject to judicial review, the natural reading of "determination respecting an application" in § 210(e) encompassed both final decisions and procedures used to reach those decisions; and (2) Congress could preclude judicial review of constitutional claims in the interest of expeditiously processing an avalanche of claims from noncitizens upon whom Congress was conferring a substantial benefit.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Administrative Law § 208; Aliens § 36; Courts § 267; Statutes §§ 80, 82 — federal question jurisdiction — availability of judicial review — limitations — Immigration and Nationality Act — due process — adjustment of illegal aliens' status

1a-1c. A Federal District Court is not precluded by § 210(e) of the Immigration and Nationality Act (8 USCS § 1160(e))—which provision sets forth the administrative and judicial review provisions of an amnesty program for illegal aliens who seek to qualify for the status of "Special Agricultural Worker" (SAW)—from exercising federal question jurisdiction under 28 USCS § 1331 to hear an action alleging due process violations by the Immigration and Naturalization Service (INS) in the administration of the SAW program, because (1) the language of § 210(e), which provides that there shall be no judicial review "of a determination respecting an application" for adjustment of status under the SAW program, applies to only review of denials of individual SAW applications, and such language does not refer to general collateral challenges to unconstitutional practices and policies used by the INS in processing applications; (2) such reading is supported by the

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3A Am Jur 2d, Aliens and Citizens § 1366.17

18A Federal Procedure, L Ed, Immigration, Naturalization, and Nationality § 45:1199

10A Federal Procedural Forms, L Ed, Immigration, Naturalization, and Nationality § 40:233.2

8 USCS § 1160(e)

Immigration Law Service § 44:148

L Ed Digest, Aliens § 36

L Ed Index, Aliens; Immigration and Naturalization

Index to Annotations, Aliens; Immigration and Naturalization

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCE

Modes of judicial review in exclusion and deportation proceedings. 1 L Ed 2d 1715.

language in § 210(e)(3)(B), in its provisions (a) that judicial review "shall be based solely upon the administrative record established at the time of the review by the appellate authority," since the language incorporates an assumption that the limited review provisions of § 210(e) apply to only claims that have been subjected to administrative consideration and that have resulted in the creation of an adequate record, and (b) for an "abuse of discretion" standard of judicial review, since constitutional or statutory claims are reviewed de novo by the courts and thus it would make no sense to require that constitutional and statutory challenges to INS procedures be subject to the specialized review procedures of § 210(e); (3) Congress could have used broader statutory language if it had intended that the limited review provisions of § 210(e) encompass challenges to INS procedures and practices; and (4) meaningful judicial review of challengers' statutory and constitutional claims would be foreclosed if they were required to avail themselves of § 210(e)'s limited procedures for judicial review of INS action. (Rehnquist, Ch. J., and Scalia, J., dissented from this holding.)

Appeal § 1087.5(2) — points not raised in certiorari petition

2. The United States Supreme Court's grant of certiorari will be limited to the question whether the Federal District Court below had jurisdiction, where the petitioners did not seek review in their certiorari petition of the District Court's rulings on the merits or the form of its injunctive relief.

Constitutional Law § 729 — due process — impact of denial of alien status adjustment

3. The impact, on an illegal alien's opportunity to obtain gainful employment, of a denial by the Immigration and Naturalization Service of an adjustment in the alien's status to that of a lawfully admitted "Special Agricultural Worker" (SAW) under § 210 of the Immigration and Nationality Act (8 USCS § 1160)—even disregarding the risk of deportation to the alien—is plainly sufficient to mandate constitutionally fair procedures in the SAW application process.

Evidence § 147 — presumption — knowledge of law

4. In construing a federal statute, it is presumable that Congress legislates with knowledge of the United States Supreme Court's basic rules of statutory construction.

Administrative Law §§ 200, 208; Aliens § 36; Courts § 267 — presumption of judicial reviewability — limitations in Immigration and Nationality Act — due process challenge to INS procedures — federal question jurisdiction

5a-5d. The strong presumption in favor of judicial review of administrative action is not overcome by either the language or the purpose of § 210(e) of the Immigration and Nationality Act (8 USCS § 1160(e)—which provision prohibits judicial review "of a determination respecting an application" by an illegal alien seeking to qualify for the status of "Special Agricultural Worker" (SAW) except for review of deportation orders in the Federal Court of Appeals—so as to preclude an action in Federal District Court alleging due process violations in the procedures used by the Immigration and Naturalization Service in administering the SAW program; a District

Court does not lack federal question jurisdiction over such an action, since there otherwise would be no complete or meaningful basis upon which to review determinations on SAW applications, given that (1) INS procedures do not allow SAW applicants to assemble an adequate record for purposes of judicial review, in view of (a) the lack of recordings or transcripts of applicant interviews, and (b) an inadequate opportunity to call witnesses or present other evidence, (2) voluntary surrender, the only way which most aliens denied SAW status could obtain review in the Court of Appeals, is tantamount to a complete denial of judicial review, and (3) even in the context of a deportation proceeding, it is unlikely that a Court of Appeals, lacking an adequate record and the factfinding and record-developing capabilities of a District Court, would be in a position to provide meaningful review. (Rehnquist, Ch. J., and Scalia, J., dissented in part from this holding.)

Administrative Law § 208 — judicial review — limitations on availability

6. Federal statutes that provide for only a single level of judicial review of an administrative action in the Federal Court of Appeals are warranted in circumstances only where factfinding by a Federal District Court would unnecessarily duplicate an adequate administrative record; such circumstances are not present in cases alleging unconstitutional administrative patterns or practices, where District Court factfinding is essential given the inadequate administrative record.

SYLLABUS BY REPORTER OF DECISIONS

The Immigration Reform and Control Act of 1986 (Reform Act) amended the Immigration and Nationality Act (INA) creating, inter alia, a "Special Agricultural Workers" (SAW) amnesty program for specified alien farmworkers. The Immigration and Naturalization Service (INS) determined SAW status eligibility based on evidence presented at a personal interview with each applicant. Section 210(e)(1) of the INA barred judicial review "of a determination respecting an application" except in the context of judicial review of a deportation order, a review conducted by the courts of appeals. Respondents, the Haitian Refugee Center and unsuccessful individual SAW applicants, filed a class action in the District Court, alleging that the initial application reviewprocess was conducted in an arbitrary manner in violation of the Reform Act and the applicants' due process rights under the Fifth Amendment. While recognizing that individual aliens could not obtain judicial review of denials of their SAW status applications except in deportation proceedings in the courts of appeals, the District Court accepted jurisdiction because the complaint did not challenge any individual determination of any application for SAW status, but rather contained allegations about the manner in which the entire program was being implemented. The court found that a number of INS practices violated the Reform Act and were unconstitutional, and the Court of Appeals affirmed.

Held: The Distict Court had federal-question jurisdiction to hear respondents' constitutional and statutory challenges to the INS procedures.

(a) There is no clear congressional language mandating preclusion of jurisdiction. Section 210(e)(1)'s language prohibiting judicial review "of *a determination* respecting *an application"* refers to the process of direct review of individual denials of SAW status, not to general collateral challenges to unconstitutional practices and policies used by the INS in processing applications. The reference to "a determination" describes a single act, as does the language of § 210(e)(3), which provides for "judicial review of *such a denial."* Section 210(e)(3)(B), which specifies that judicial review is to be based on the administrative record and that factual determinations contained in such a record shall be conclusive absent a showing of an abuse of discretion, supports this reading. A record emerging from the administrative appeals process does not address the kind of procedural and constitutional claims respondents have brought, and the abuse-of-discretion standard does not apply to constitutional or statutory determinations, which are subject to de novo review. Limiting judicial review of general constitutional and statutory challenges to the provisions set forth in § 210(e) therefore is not contemplated. Moreover, had Congress intended the limited review provisions of § 210(e) to encompass challenges to INS procedures and practices, it could easily have used broader statutory language.

(b) As a practical matter, the individual respondents would be unable to obtain meaningful judicial review of their application denials or of their objections to INS procedures if they were required to avail themselves of the INA's limited judicial review procedures. Under the statutory scheme, review of an individual determination would be limited to the administrative record, which respondents have alleged is inadequate; aliens would have to surrender themselves for deportation in order to receive any judicial review, which is tantamount to a complete denial of such review; and a court of appeals reviewing an individual determination would most likely not have an adequate record as to a pattern of allegedly unconstitutional practices and would lack a district court's factfinding and record-developing capabilities. Given this Court's well-settled presumption favoring interpretations of statutes that allow judicial review of administrative action, the Court cannot conclude that Congress so intended to foreclose all forms of meaningful judicial review of SAW application denials and general collateral challenges to INS procedures. This case is therefore controlled by Bowen v Michigan Academy of Family Physicians, 476 US 667, 90 L Ed 2d 623, 106 S Ct 2133, which interpreted the Medicare statute to permit individuals to challenge a payment regulation's validity even though the statute barred judicial review of individual claims for payment under the regulation. Heckler v Ringer, 466 US 602, 80 L Ed 2d 622, 104 S Ct 2013, distinguished.

872 F2d 1555, affirmed.

Stevens, J., delivered the opinion of the Court, in which Marshall, Blackmun, O'Connor, Kennedy, and Souter, JJ., joined, and in Parts I, II, III, and IV of which White, J., joined. Rehnquist, C.J., filed a dissenting opinion, in which Scalia, J., joined.

APPEARANCES OF COUNSEL

Michael R. Dreeben argued the cause for petitioners.
Ira J. Kurzban argued the cause for respondents.
Briefs of Counsel, p 1275, infra.

OPINION OF THE COURT

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Justice **Stevens** delivered the opinion of the Court.*

The Immigration Reform and Control Act of 1986 (Reform Act)[1] constituted a major statutory response to the vast tide of illegal immigration that had produced a "shadow population" of literally millions of undocumented aliens in the United States. On the one hand, Congress sought to stem the tide by making the plight of the undocumented alien even more onerous in the future than it had been in the past; thus, the Reform Act imposed criminal sanctions on employers who hired undocumented workers[2] and made a number

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of federally funded welfare benefits unavailable to these aliens.[3] On the other hand, in recognition that a large segment of the shadow population played a useful and constructive role in the American economy,[4] but continued to reside in perpetual fear,[5] the Reform Act established two broad

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* Justice White joins only Parts I, II, III, and IV of this opinion.

[1] Pub L 99-603, 100 Stat 3359.

[2] Prior to November 6, 1986, the enactment date of the Reform Act, the employment of undocumented aliens did not violate federal law. See 66 Stat 228, as amended, 8 USC § 1324(a) (1982 ed) [8 USCS § 1324(a)] (providing that "for the purposes of this section [criminalizing the bringing in and harboring of aliens not lawfully entitled to enter and reside in the United States], employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring"). Section 101 of the Reform Act, however, authorized both civil and criminal penalties against employers who hire unauthorized aliens either knowingly or without complying with specified verification requirements. See 8 USC § 1324a [8 USCS § 1324a].

[3] Section 121 of the Reform Act amended several federal programs to deny benefits to aliens who could not verify their lawful status. See Pub L 99-603, 100 Stat 3384-3394.

[4] The House Committee noted the purpose behind the legalization programs in the Reform Act:

"The United States has a large undocumented alien population living and working within its borders. Many of these people have been here for a number of years and have become a part of their communities. Many have strong family ties here which include US citizens and lawful residents. They have built social networks in this country. They have contributed to the United States in myriad ways, including providing their talents, labor and tax dollars. However, because of their undocumented status, these people live in fear, afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill.

"Continuing to ignore this situation is harmful to both the United States and the aliens themselves. However, the alternative of intensifying interior enforcement or attempting mass deportations would be both costly, ineffective, and inconsistent with our immigrant heritage.

"The Committee believes that the solution lies in legalizing the statuts [sic] of aliens who have been present in the United States for several years, recognizing that past failures to enforces [sic] the immigration laws have allowed them to enter and to settle here.

"This step would enable INS to target its enforcement efforts on new flows of undocumented aliens and, in conjunction with the proposed employer sanctions programs, help stem the flow of undocumented people to the United States. It would allow qualified aliens to contribute openly to society and it would help to prevent the exploitation of this vulnerable population in the work place." HR Rep No. 99-682, pt 1, p 49 (1986).

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amnesty programs to allow existing undocumented aliens to emerge from the shadows.

The first amnesty program permitted any alien who had resided in the United States continuously and unlawfully since January 1, 1982, to qualify for an adjustment of his or her status to that of a lawful permanent resident. See 100 Stat 3394, as amended, 8 USC § 1255a [8 USCS § 1255a]. The second program required the Attorney General to adjust the status of any alien farmworker who could establish that he or she had resided in the United States and performed at least 90 days of qualifying agricultural work during the 12-month period prior to May 1, 1986, provided that the alien could also establish his or her admissibility in the United States as an immigrant. The Reform Act required the Attorney General first to adjust the status of these aliens to "[s]pecial agricultural workers" (SAW's) lawfully admitted for temporary residence, see 100 Stat 3417, as amended, 8 USC § 1160(a)(1) [8 USCS § 1160(a)(1)], and then eventually to aliens lawfully admitted for permanent residence, see § 1160(a)(2).

[1a] This case relates only to the SAW amnesty program. Although additional issues were resolved by the District Court and the Court of Appeals, the only question presented to us is whether § 210(e) of the Immigration and Nationality Act (INA), which was added by § 302(a) of the Reform Act and sets forth the administrative and judicial review provisions of the SAW program, see 8 USC § 1160(e) [8 USCS § 1160(e)], precludes a federal district court from exercising general federal-question jurisdiction over an action alleging a pattern or practice of procedural due process violations by the Immigration and Naturalization Service (INS) in its administration of the SAW program. We hold that given the absence of clear congressional

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language mandating preclusion of federal jurisdiction and the nature of respondents' requested relief, the District Court had jurisdiction to hear respondents' constitutional and statutory challenges to INS procedures. Were we to hold otherwise and instead require respondents to avail themselves of the limited judicial review procedures set forth in § 210(e) of the INA, meaningful judicial review of their statutory and constitutional claims would be foreclosed.

I

The Reform Act provided three important benefits to an applicant for SAW status. First, the mere filing of a "non-frivolous application" entitled the alien to a work authorization that would remain valid during the entire period that the application was being processed. See 8 USC § 1160(d)(2)(B) [8 USCS § 1160(d)(2)(B)]. Second, regardless of the disposition of the application, the Reform Act expressly prohibited the Government from using any information in the application for enforcement purposes. Thus, the application process could not be used as a means of identifying deportable aliens; rather, the initiation of a deportation proceeding had to be based on evidence obtained from an independent source. See § 1160(b)(6). Third, if SAW status was granted, the alien became a lawful temporary resident, see § 1160(a)(1), and, in due course, could obtain the status of a permanent resident, see § 1160(a)(2).

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[5] Senator Simpson, one of the sponsors of the Reform Act, described the vulnerability of this "subculture of human beings who are afraid to go to the cops, afraid to go to a hospital, afraid to go to their employer who says 'One peep out of you, buster, and you are down the road.'" 132 Cong Rec 33222 (1986).

In recognition that the fear of prosecution or deportation would cause many undocumented aliens to be reluctant to come forward and disclose their illegal status, the Reform Act directed the Attorney General to enlist the assistance of a variety of nonfederal organizations to encourage aliens to apply and to provide them with counsel and assistance during the application process. These "qualified . . . designated entities" (QDE's), which included private entities such as farm labor organizations and associations of agricultural

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employers as well as qualified state, local, and community groups, were not allowed to forward applications for SAW status to the Attorney General unless the applicant consented. See §§ 1160(b)(2), (b)(4).

The Reform Act provided that SAW status applications could be filed with a specially created legalization office (LO), or with a QDE, which would forward applications to the appropriate LO, during an 18-month period commencing on June 1, 1987. See § 1160(b)(1)(A). Regulations adopted by the INS to administer the program provided for a personal interview of each applicant at an LO. See 8 CFR § 210.2(c)(2)(iv) (1990). In the application, the alien had to prove by a preponderance of the evidence that he or she worked the requisite 90 days of qualifying seasonal agricultural services. See §§ 210.3(a), (b)(1). To meet the burden of proof, the applicant was required to present evidence of eligibility independent of his or her own testimony. See § 210.3(b)(2). The applicant could meet this burden through production of his or her employer's payroll records, see 8 USC § 1160(b)(3)(B)(ii) [8 USCS § 1160(b)(3)(B)(ii)], or through submission of affidavits "by agricultural producers, foremen, farm labor contractors, union officials, fellow employees, or other persons with specific knowledge of the applicant's employment" see 8 CFR § 210.3(c)(3) (1990). At the conclusion of the interview and of the review of the application materials, the LO could deny the application or make a recommendation to a regional processing facility that the application be either granted or denied. See § 210.1(q). A denial, whether at the regional or local level, could be appealed to the legalization appeals unit, which was authorized to make the final administrative decision in each individual case. See § 103.3(a)(2)(iii).

The Reform Act expressly prohibited judicial review of such a final administrative determination of SAW status except as authorized by § 210(e)(3)(A) of the amended INA.

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That subsection permitted "judicial review of such a denial only in the judicial review of an order of exclusion or deportation."[6] In view of the fact that the courts of appeals constitute the only fora for judicial review of deportation orders, see 75 Stat 651, as amended, 8 USC § 1105a [8 USCS § 1105a], the statute plainly foreclosed any review in the district courts of individual denials of SAW status applications. Moreover, absent initiation of a deportation proceeding against an unsuccessful applicant, judicial review of such individual determinations was completely foreclosed.

II

This action was filed in the District Court for the Southern District of Florida by the Haitian Refugee Center, the Migration and Refugee Services of the Roman Catholic Diocese of Palm Beach,[7] and 17 unsuccessful individual SAW applicants. The plaintiffs sought relief on behalf of a class of alien farmworkers who either had been or would be injured by unlawful practices and policies adopted by the INS in its administration of the SAW program. The complaint alleged that the interview process was conducted in an arbitrary fashion that deprived applicants of the due process guaranteed by the Fifth Amendment to the Constitution. Among other charges, the plaintiffs alleged that INS procedures did not allow SAW applicants to be apprised of or to be given opportunity to challenge adverse evidence on which denials were

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[6] The full text of § 210(e) of the INA, as set forth in 8 USC § 1160(e) [8 USCS § 1160(e)], reads as follows:

"(e) Administrative and judicial review

"(1) Administrative and judicial review

"There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) Administrative review

"(A) Single level of administrative appellate review

"The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

"(B) Standard for review

"Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) Judicial review

"(A) Limitation to review of exclusion or deportation

"There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 1105a of this title.

"(B) Standard for judicial review

"Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole."

[7] The complaint alleges that this respondent has the following interest in the litigation:

"Plaintiff MIGRATION AND REFUGEE SERVICES OF THE ROMAN CATHOLIC DIOCESE OF PALM BEACH ("RCDPB") is a component of the Roman Catholic Diocese of Palm Beach. Its principle [sic] place of business is West Palm Beach, Florida. Many members of parishes within the diocese of Palm Beach are foreign agricultural workers who worked at least 90 man-days in the 1985 and 1986 season, and are therefore potentially eligible for the SAW program. In addition, Plaintiff MIGRATION AND REFUGEE SERVICES OF THE RCDPB has been designated by Defendant INS as a "Qualified Designated Entity" (QDE) under IRCA. QDE's are authorized to provide counseling to aliens about the legalization program, to assist them in filling out applications and obtain documentation, and receive applications for adjustment to temporary resident status. Under IRCA, applications filed with a QDE are deemed to have been filed as of the same date with INS, to whom the QDE's forward the applications for processing. QDE's are authorized to receive fees from applicants and reimbursement from INS for counseling and filing services. The actions of Defendants complained of in this case discourages otherwise eligible SAW applicants from seeking counseling and filing of their applications by Plaintiffs MIGRATION AND REFUGEE SERVICES OF THE RCDPB and prevents them from fulfilling its basic mission of assisting aliens to qualify under IRCA." App 24.

predicated, that applicants were denied the opportunity to present witnesses on their own behalf, that non-English speaking Haitian applicants were unable to communicate effectively with LO's because competent interpreters were not provided, and that no verbatim recording of the interview was made, thus inhibiting even any meaningful administrative review of application denials by LO's or regional processing facilities. See App 44-45; Haitian Refugee Center, Inc. v Nelson, 694 F Supp 864, 867 (SD Fla 1988).

After an evidentiary hearing, the District Court ruled that it had jurisdiction, that the case should proceed as a class action, and that a preliminary injunction should issue. The court recognized that individual aliens could not contest the denial of their SAW applications "unless and until the INS institut[ed] deportation proceedings against them," but accepted jurisdiction because the complaint "does not challenge any individual determination of any application for SAW status but rather attacks the manner in which the entire program is being implemented, allegations beyond the scope of administrative review."[8] On the merits, the District Court

found that a number of INS practices violated the Reform Act and were unconstitutional,[9] and entered an injunction requiring the INS to vacate large categories of denials,[10] and to modify

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[8] Haitian Refugee Center, Inc. v Nelson, 694 F Supp 864, 873 (SD Fla 1988). The District Court also found that both of the organizational plaintiffs had standing. It explained:

"HRC has alleged that the '[d]efendants' refusal to recognize that such persons [HRC's members] are eligible under IRCA both directly and indirectly injures HRC. It directly injures the organization because it makes HRC's work of assisting the Haitian refugee community more difficult and results in the diversion of HRC's limited resources away from members and clients having other urgent needs.' Complaint at ¶ 17. HRC also alleges an indirect injury through the adverse effect upon its members. Id. The plaintiff MRS is a QDE under IRCA authorized to provide counseling to aliens about the legalization process and to assist them in obtaining documentation. It also receives applications and fees from aliens and is reimbursed by the INS for counseling and filing services. MRS alleges that the defendants' behavior has discouraged otherwise eligible SAW applicants from seeking counseling and/or filing their claims and MRS is prevented from fulfilling its basic mission of assisting aliens to qualify under IRCA." Id., at 874-875.

[9] Although many employers did not maintain payroll records for seasonal workers, some LO's routinely denied applications that were not supported by such records. The District Court found that the INS maintained a secret list of employers whose supporting affidavits were routinely discredited without giving applicants an opportunity to corroborate the affiants' statements. See id., at 871-872. The District Court moreover found that interpreters were not provided at LO interviews, even though many Haitian applicants spoke only Creole and no personnel in a particular LO understood that language, and that no recordings or transcripts of LO interviews were made, despite the fact that the interview "is the only face to face encounter between the applicant and the INS allowing the INS to assess the applicant's credibility." See id., at 869.

[10] The preliminary injunction provides in part:

"(3) In those cases which the INS denied based in whole or in part on the fact that the applicant failed to submit payroll records or its practices in certain respects.[11]

The Court of Appeals affirmed. On the merits, it upheld all of the findings and conclusions of the District Court, and it

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also rejected each of the Government's jurisdictional arguments. Relying on earlier Circuit precedent, it held that the statutory bar to judicial review of individual determinations was inapplicable:

> "In Jean v Nelson, 727 F2d 957 (11th Cir 1984) (in banc), aff'd, 472 US 846 . . . [86 L Ed 2d 664, 105 S Ct 2992] (1985), we reaffirmed that section 106 of the INA (Codified at 8 USC § 1105a [8 USCS § 1105a]) does not deprive district courts of jurisdiction to review allegations of systematic abuses by INS officials. Jean, 727 F2d, at 980. We explained that to postpone 'judicial resolution of a disputed issue that affects an entire class of aliens until an individual petitioner has an opportunity to litigate it on habeas corpus would foster the very delay and procedural redundancy that Congress sought to eliminate in passing § 1105a.' Id. In this action, appellees do not challenge the merits of any individual status determination; rather . . . they contend that defendants' policies and practices in processing SAW applications deprive them of their statutory and constitutional rights." Haitian Refugee Center, Inc. v Nelson, 872 F2d 1555, 1560 (CA11 1989).

[2] In their certiorari petition, petitioners did not seek review of the District Court's rulings on the merits or the form of its injunctive relief. Our grant of certiorari is therefore limited to the jurisdictional question.

III

[3] We preface our analysis of petitioners' position with an identification of matters that are not in issue. First, it is undisputed that SAW status is an important benefit for a previously undocumented alien. This status not only protects the alien from deportation; it also creates job opportunities that are not available to an alien whose application is denied. Indeed, the denial of SAW status places the alien in an even worse position than he or she was in before the Reform Act was passed because lawful employment opportunities are no

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longer available to such persons.

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piecework receipts, the INS shall vacate the denials and reconsider the cases in light of the proper standard of proof which will require the government to present evidence to negate the just and reasonable inference created by the affidavits and other documents submitted by the applicant;

"(4) The INS shall vacate those denials issued by the Legalization Offices during the period June 1, 1987, to March 29, 1988, unless the government can show that the applications were clearly frivolous based upon the documentation submitted by the applicant or that the applicant admitted fraud or misrepresentation in the application process." Id. at 881.

[11] The preliminary injunction entered by the District Court ordered the INS to institute the following procedures:

"(6) The Legalization Offices shall maintain competent translators, at a minimum, in Spanish and Haitian Creole, and translators in other languages shall be made available if necessary;

"(7) The INS shall afford the applicants the opportunity to present witnesses at the interview including but not limited to growers, farm labor contractors, co-workers, and any other individuals who may offer testimony in support of the applicant;

"(8) The interviewers shall be directed to particularize the evidence offered, testimony taken, credibility determinations, and any other relevant information on the form I-696." Ibid.

Thus, the successful applicant for SAW status acquires a measure of freedom to work and to live openly without fear of deportation or arrest that is markedly different from that of the unsuccessful applicant. Even disregarding the risk of deportation, the impact of a denial on the opportunity to obtain gainful employment is plainly sufficient to mandate constitutionally fair procedures in the application process. At no time in this litigation have petitioners asserted a right to employ arbitrary procedures, or questioned their obligation to afford SAW status applicants due process of law.

Nor, at this stage of the litigation, is there any dispute that the INS routinely and persistently violated the Constitution and statutes in processing SAW applications. Petitioners do not deny that those violations caused injury in fact to the two organizational plaintiffs as well as to the individual members of the plaintiff class. Although it does not do so explicitly, petitioners' argument assumes that the District Court would have federal-question jurisdiction over the entire case if Congress had not, through the Reform Act, added § 210(e) to the INA. The narrow issue, therefore, is whether § 210(e), which bars judicial review of individual determinations except in deportation proceedings, also forecloses this general challenge to the INS' unconstitutional practices.

IV

[1b] Petitioners' entire jurisdictional argument rests on their view that respondents' constitutional challenge is an action seeking "judicial review of a determination respecting an application for adjustment of status" and that district court jurisdiction over the action is therefore barred by the plain language of § 210(e)(1) of amended INA. See 8 USC § 1160(e)(1) [8 USCS § 1160(e)(1)].[12] The critical words in § 210(e)(1),

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however, describe the provision as referring only to review "of *a determination* respecting *an application*" for SAW status (emphasis added). Significantly, the reference to "a determination" describes a single act rather than a group of decisions or a practice or procedure employed in making decisions. Moreover, when § 210(e)(3), see 8 USC § 1160(e)(3) [8 USCS § 1160(e)(3)], further clarifies that the only judicial review permitted is in the context of a deportation proceeding, it refers to "judicial review of *such a denial*"—again referring to a single act, and again making clear that the earlier reference to "a determination respecting an application" describes the denial of an individual application. We therefore agree with the District Court's and the Court of Appeals' reading of this language as describing the process of direct review of individual denials of SAW status, rather than as referring to general collateral challenges to unconstitutional practices and policies used by the agency in processing applications.

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[12] As petitioners state in their brief:

"The Act declares in all-encompassing terms: 'There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.' 8 USC 1160(e)(1) [8 USCS § 1160(e)(1)]. In the following paragraphs, the subsection spells out the precise procedures intended to provide the exclusive method of review. The subsection requires the establishment of a 'a single level of administrative appellate review of such a determination,' and unequivocally states that '[t]here shall be judicial review of such a denial [of a SAW application] only in the judicial review of an order of exclusion or deportation under section 1105a of this title.' 8 USC 1160(e)(2)(A) and (e)(3)(A) [8 USCS §§ 1160(e)(2)(A) and (e)(3)(A)]. Section 1105a(a), in turn, provides that a petition for review in the court of appeals 'shall be the sole and exclusive procedure for[ ] the judicial review of all final orders of deportation,' while exclusion orders are reviewable exclusively in habeas corpus proceedings. 8 USC 1105a(b) [8 USCS § 1105a(b)]. Congress could hardly have chosen clearer or more forceful language to express its intention to preclude *any* judicial review of a 'determination respecting an application' for SAW status, other than in the specified review proceedings applicable to individual deportation or exclusion orders.

"In light of IRCA's clear directions, district courts are not free to draw on their federal question jurisdiction under 28 USC 1331 [28 USCS § 1331], or on their jurisdiction granted under the immigration laws, 8 USC 1329 [8 USCS § 1329], to entertain collateral attacks on procedures used to adjudicate SAW applications. The exercise of either source of general power is barred by the precise and specific language of IRCA." Brief for Petitioners 11-13 (footnotes omitted).

This reading of the Reform Act's review provision is supported by the language in § 210(e)(3)(B) of the INA, which provides that judicial review "shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole." 8 USC § 1160(e)(3)(B) [8 USCS § 1160(e)(3)(B)]. This provision incorporates an assumption that the limited review provisions of § 210(e) apply only to claims that have been subjected to administrative consideration and that have resulted in the creation of an adequate administrative record. However, the record created during the SAW administrative review process consists solely of a completed application form, a report of medical examination, any documents or affidavits that evidence an applicant's agricultural employment and residence, and notes, if any, from an LO interview—all relating to a single SAW applicant. Because the administrative appeals process does not address the kind of procedural and constitutional claims respondents bring in this action, limiting judicial review of these claims to the procedures set forth in § 210(e) is not contemplated by the language of that provision.

Moreover, the "abuse-of-discretion" standard of judicial review under § 210(e)(3)(B) would make no sense if we were to read the Reform Act as requiring constitutional and statutory challenges to INS procedures to be subject to its specialized review provision. Although the abuse-of-discretion standard is appropriate for judicial review of an administrative adjudication of the facts of an individual application for SAW status, such a standard does not apply to constitutional or statutory claims, which are reviewed de novo by the courts. The language of § 210(e)(3)(B) thus lends substantial credence to the conclusion that the Reform Act's review provision

does not apply to challenges to INS' practices and procedures in administering the SAW program.

Finally, we note that had Congress intended the limited review provisions of § 210(e) of the INA to encompass challenges to INS procedures and practices, it could easily have used broader statutory language. Congress could, for example, have modeled § 210(e) on the more expansive language in the general grant of district court jurisdiction under Title II of the INA by channeling into the Reform Act's special review procedures "all causes . . . arising under any of the provisions" of the legalization program. 66 Stat 230, 8 USC § 1329 [8 USCS § 1329]. It moreover could have modeled § 210(e) on 38 USC § 211(a) [38 USCS § 211(a)], which governs review of veterans' benefits claims, by referring to review "on all questions of law and fact" under the SAW legalization program.

[1c] Given Congress' choice of statutory language, we conclude that challenges to the procedures used by INS do not fall within the scope of § 210(e). Rather, we hold that § 210(e) applies only to review of denials of individual SAW applications. Because respondents' action does not seek review on the merits of a denial of a particular application, the District Court's general federal-question jurisdiction under 28 USC § 1331 [28 USCS § 1331] to hear this action remains unimpaired by § 210(e).

V

Petitioners place their principal reliance on our decision in Heckler v Ringer, 466 US 602, 80 L Ed 2d 622, 104 S Ct 2013 (1984). The four respondents in Ringer wanted to establish a right to reimbursement under the Medicare Act for a particular form of surgery that three of them had undergone and the fourth allegedly needed. They sought review of the Secretary's policy of refusing reimbursement for that surgery in an original action filed in the District Court, without exhausting the procedures specified in the statute for processing reimbursement claims. The District Court dismissed the case for lack of jurisdiction because the essence of the complaint was a claim of entitlement to payment for the surgical procedure. With respect

to the three respondents who had had the surgery, we concluded that "it makes no sense" to construe their claims "as anything more than, at bottom, a claim that they should be paid for their BCBR [bilateral carotid body resection] surgery," id., at 614, 80 L Ed 2d 622, 104 S Ct 2013, since success in their challenge of the Secretary's policy denying reimbursement would have the practical effect of also deciding their claims for benefits on the merits. "Indeed," we noted, "the relief that respondents seek to redress their supposed 'procedural' objections is the invalidation of the Secretary's current policy and a 'substantive' declaration from her that the expenses of BCBR surgery are reimbursable under the Medicare Act." Ibid. Concluding that respondents' judicial action was not "collateral" to their claims for benefits, we thus required respondents first to pursue their administrative remedies. In so doing, we found it significant that respondents, even if unsuccessful before the agency, "clearly have an adequate remedy in § 405(g) for challenging [in the courts] all aspects of the Secretary's denial of their claims for payment for the BCBR surgery." Id., at 617, 80 L Ed 2d 622, 104 S Ct 2013.[13]

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[13] The Court in Heckler also concluded that the fourth respondent's claim was "essentially one requesting the payment of benefits for BCBR surgery, a claim cognizable only under § 405(g)," 466 US, at 620, 80 L Ed 2d 622, 104 S Ct 2013, and held that the "claim for future benefits must be construed as a 'claim arising under' the Medicare Act because any other construction would allow claimants substantially to undercut Congress' carefully crafted scheme for administering the Medicare Act." Id., at 621, 80 L Ed 2d 622, 104 S Ct 2013.

Unlike the situation in Heckler, the individual respondents in this action do not seek a substantive declaration that they are entitled to SAW status. Nor would the fact that they prevail on the merits of their purportedly procedural objections have the effect of establishing their entitlement to SAW status. Rather, if allowed to prevail in this action, respondents would only be entitled to have their case files reopened and their applications reconsidered in light of the newly prescribed INS procedures.

[498 US 496]

[4, 5a] Moreover, unlike in Heckler, if not allowed to pursue their claims in the District Court, respondents would not as a practical matter be able to obtain meaningful judicial review of their application denials or of their objections to INS procedures notwithstanding the review provisions of § 210(e) of the amended INA. It is presumable that Congress legislates with knowledge of our basic rules of statutory construction, and given our well-settled presumption favoring interpretations of statutes that allow judicial review of administrative action, see Bowen v Michigan Academy of Family Physicians, 476 US 667, 670, 90 L Ed 2d 623, 106 S Ct 2133 (1986), coupled with the limited review provisions of § 210(e), it is most unlikely that Congress intended to foreclose all forms of meaningful judicial review.

[5b] Several aspects of this statutory scheme would preclude review of respondents' application denials if we were to hold that the District Court lacked jurisdiction to hear this challenge. Initially, administrative or judicial review of an agency decision is almost always confined to the record made in the proceeding at the initial decisionmaking level, and one of the central attacks on INS procedures in this litigation is based on the claim that such procedures do not allow applicants to assemble adequate records. As the District Court found, because of the lack of recordings or transcripts of LO interviews and the inadequate opportunity for SAW applicants to call witnesses or present other evidence on their behalf, the administrative appeals unit of the INS, in reviewing the decisions of LO's and regional processing facilities, and the courts of appeals, in reviewing SAW denials in the context of deportation proceedings, have no complete or meaningful basis upon which to review application determinations.

Additionally, because there is no provision for direct judicial review of the denial of SAW status unless the alien is later apprehended and deportation proceedings are initiated, most aliens denied SAW status can ensure themselves review in courts of appeals only if they voluntarily surrender themselves for deportation. Quite obviously, that price is tantamount

[498 US 497]

to a complete denial of judicial review for most undocumented aliens.

[5c, 6] Finally, even in the context of a deportation proceeding, it is unlikely that a court of appeals would be in a position to provide meaningful review of the type of claims raised in this litigation. To establish the unfairness of the INS practices, respondents in this case adduced a substantial amount of evidence, most of which would have been irrelevant in the processing of a particular individual application. Not only would a court of appeals reviewing an individual SAW determination therefore most likely not have an adequate record as to the pattern of INS' allegedly unconstitutional practices, but it also would lack the factfinding and record-developing capabilities of a federal district court. As the American Bar Association as amicus points out, statutes that provide for only a single level of judicial review in the courts of appeals "are traditionally viewed as warranted only in circumstances where district court factfinding would unnecessarily duplicate an adequate administrative record—circumstances that are not present in 'pattern and practice' cases where district court factfinding is essential [given the inadequate administrative record]." Brief for American Bar Association as Amicus Curiae 7. It therefore seems plain to us, as it did to the District Court and the Court of Appeals, that restricting judicial review to the courts of appeals as a component of the review of an individual deportation order is the practical equivalent of a total denial of judicial review of generic constitutional and statutory claims.

Decision in this case is therefore supported by our unanimous holding[14] in Bowen, supra. In that case we rejected the Government's contention that two sections of the Social Security Act, 42 USC § 301 et seq. (1982 ed) [42 USCS §§ 301 et seq.], barred judicial review of the validity of a regulation governing the payment of Medicare benefits. We recognized that review of

individual determinations of the amount due on particular claims was foreclosed, but upheld the collateral attack on the regulation itself, emphasizing the critical difference between an individual "amount determination" and a challenge to the procedures for making such determinations:

> "The reticulated statutory scheme, which carefully details the forum and limits of review of 'any determination . . . of . . . the amount of benefits under part A,' 42 USC § 1395ff(b)(1)(C) (1982 ed, Supp II) [42 USCS § 1395ff(b)(1)(C)], and of the 'amount of . . . payment' of benefits under Part B, 42 USC § 1395u(b)(3)(C) [42 USCS § 1395u(b)(3)(C)], simply does not speak to challenges mounted against the *method* by which such amounts are to be determined rather than the *determinations* themselves. As the Secretary has made clear, 'the legality, constitutional or otherwise, of any provision of the Act or regulations relevant to the Medicare Program' is not considered in a 'fair hearing' held by a carrier to resolve a grievance related to a determination of the amount of a Part B award. As a result, an attack on the validity of a regulation is not the kind of administrative action that we described in Erika as an 'amount determination' which decides 'the amount of the Medicare payment to be made on a particular claim' and with respect to which the Act impliedly denies judicial review. 456 US, at 208 [72 L Ed 2d 12, 102 S Ct 1650]." 476 US, at 675-676, 90 L Ed 2d 623,

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[14] Justice Rehnquist did not participate in the case.

106 S Ct 2133 (emphasis in original).

Inherent in our analysis was the concern that absent such a construction of the judicial review provisions of the Medicare statute, there would be "no review at all of substantial statutory and constitutional challenges to the Secretary's administration of Part B of the Medicare program." Id., at 680, 90 L Ed 2d 623, 106 S Ct 2133.

[5d] As we read the Reform Act and the findings of the District Court, therefore, this case is controlled by Bowen rather than by Heckler. The strong presumption in favor of judicial review of administrative action is not overcome either by the

language or the purpose of the relevant provisions of the Reform Act.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

SEPARATE OPINION

Chief Justice **Rehnquist,** with whom Justice **Scalia** joins, dissenting.

Congress has carefully limited the judicial review available under the Immigration Reform and Control Act of 1986 (Reform Act) in language which "he who runs may read." The Court, with considerable and obvious effort, finds a way to avoid this limitation, because to apply the statute as written could bar judicial review of respondents' constitutional claims. The statute as written is, in my view, constitutional, and there is therefore no need to rewrite it.

I

The relevant provisions of the Reform Act dealing with administrative and judicial review are found in 8 USC § 1160(e) [8 USCS § 1160(e)]:

"(1) Administrative and judicial review

"There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) Administrative review

"(A) Single level of administrative appellate review

"The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination

. . . . .

"(3) Judicial review

"(A) Limitation to review of exclusion or deportation

"There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 1105a of this title."

The first of the quoted sentences states, as clearly as any language can, that judicial review of a "determination respecting an application for adjustment of status under this section" may not be had except in accordance with the provisions of the subsection. The plain language of subsection (3)(A) provides that judicial review of a denial may be had only in connection with review of an order of exclusion or deportation. The Court chooses to read this language as dealing only with "direct review of individual denials of SAW status, rather than as referring to general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." Ante, at 492, 112 L Ed 2d, at 1018. But the accepted view of judicial review of administrative action generally—even when there is no express preclusion provision as there is in the present statute—is that only "final actions" are reviewable in court. The Administrative Procedure Act provides:

> "[F]inal agency action for which there is no other adequate remedy in a court [is] subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action." 5 USC § 704 [5 USCS § 704].

The Court's reasoning is thus a classic non sequitur. It reasons that because Congress limited judicial review only of what were in effect final administrative decisions, it must not have intended to preclude separate challenges to procedures used by the agency before it issued any final decision. But the type of judicial review of agency action which the Court finds that Congress failed to preclude is a type not generally available even without preclusion. In the light of this settled rule, the natural reading of "determination respecting an application" in § 1160(e) encompasses both final decisions and procedures used to reach those decisions. Each of respondents' claims attacks the process used by Immigration and

[498 US 501]

Naturalization Service (INS) to make a determination respecting an application.

We have on several occasions rejected the argument advanced by respondents that individual plaintiffs can bypass restrictions on judicial review by purporting to attack general policies rather than individual results. For instance, in United States v Erika, Inc. 456 US 201, 72 L Ed 2d 12, 102 S Ct 1650 (1982), we found that in the context of the "precisely drawn provisions" of the Medicare statute, the provision of judicial review for awards made under Part A of the statute, coupled with the omission of judicial review for awards under Part B, "provides persuasive evidence that Congress deliberately intended to foreclose further review of such claims." Id., at 208, 72 L Ed 2d 12, 102 S Ct 1650 (citations omitted). Similarly, in Heckler v Ringer, 466 US 602, 80 L Ed 2d 622, 104 S Ct 2013 (1984), we addressed a challenge to a ruling issued by the Secretary of Health and Human Services that precluded payment under Medicare for a particular medical procedure. The Medicare Act permits judicial review of "any claim arising under" the Act, 42 USC §§ 405(g), (h) [42 USCS §§ 405(g), (h)], only after a claimant seeks payment and exhausts administrative remedies. The plaintiffs contended that their lawsuits challenging the Secretary's refusal to reimburse the procedure at issue were permissible without exhausting administrative remedies because they challenged only the Secretary's "'procedure' for reaching her decision," not the underlying decision on their particular claims. 466 US, at 614, 80 L Ed 2d 622, 104 S Ct 2013. We rejected this distinction, finding that "it makes no sense to construe the claims . . . as anything more than, at bottom, a claim that they should be paid for their . . . surgery." Ibid. This holding was based on the recognition that a contrary result would allow claimants "to bypass the exhaustion requirements of the Medicare Act by simply bringing declaratory judgment actions in federal court before they undergo the medical procedure in question." Id., at 621, 80 L Ed 2d 622, 104 S Ct 2013. We expressly rejected the contention—also urged by the respondents here—that "simply because a claim somehow can be construed

as 'procedural,' it is cognizable in federal district court by way of federal-question jurisdiction." Id., at 614, 80 L Ed 2d 622, 104 S Ct 2013.

It is well settled that when Congress has established a particular review mechanism, courts are not free to fashion alternatives to the specified scheme. See United States v Fausto, 484 US 439, 448-449, 98 L Ed 2d 830, 108 S Ct 668 (1988); Whitney National Bank v Bank of New Orleans & Trust Co. 379 US 411, 419-422, 13 L Ed 2d 386, 85 S Ct 551 (1965). In creating the Reform Act and the SAW program, Congress balanced the goals of the unprecedented amnesty programs with the need "to insure reasonably prompt determinations" in light of the incentives and opportunity for ineligible applicants to delay the disposition of their cases and derail the program. The Court's ponderously reasoned gloss on the statute's plain language sanctions an unwarranted intrusion into a carefully drafted congressional program, a program which placed great emphasis on a minimal amount of paperwork and procedure in an effort to speed the process of adjusting the status of those aliens who demonstrated their entitlement to adjustment. "If the balance is to be struck anew, the decision must come from Congress and not from this Court." Ringer, supra, at 627, 80 L Ed 2d 622, 104 S Ct 2013.

II

The Court bases its conclusion that district courts have jurisdiction to entertain respondents' pattern and practice allegations in part out of respect for the "strong presumption" that Congress intends judicial review of administrative action. Ante, at 498, 112 L Ed 2d, at 1022. This presumption, however, comes into play only where there is a genuine ambiguity as to whether Congress intended to preclude judicial review of administrative action. In this case two things are evident: First, in drafting the Reform Act, Congress did not preclude all judicial review of administrative action; as detailed earlier, Congress provided for judicial review of INS action in the courts of appeals in deportation proceedings, and in the district courts in orders of exclusion. Second, by enacting

such a scheme, Congress intended to foreclose all other avenues of relief. Therefore, since the statute is not ambiguous, the presumption has no force here.

The Court indicates that this presumption of judicial review is particularly applicable in cases raising constitutional challenges to agency action. Ante, at 496-499, 112 L Ed 2d, at 1020-1022. I believe that Congress intended to preclude judicial review of such claims in this instance, and that in this context it is permissible for it to do so.

In the Reform Act, Congress enacted a one-time amnesty program to process claims of illegal aliens allowing them to obtain status as lawful residents. Congress intended aliens to come forward during the limited, 12-month eligibility period because "[t]his is the first call and the last call, a one-shot deal." 132 Cong Rec 33217 (1986) (remarks of Sen. Simpson). If an alien failed to file a legalization application within the 12-month period, the opportunity was lost forever. To further expedite this unique and unprecedented amnesty program and to minimize the burden on the federal courts, Congress provided for limited judicial review.

Given the structure of the Act, and the status of these alien respondents, it is extremely doubtful that the operation of the administrative process in their cases would give rise to any colorable constitutional claims. " 'An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare.' " INS v Pangilinan, 486 US 875, 884, 100 L Ed 2d 882, 108 S Ct 2210 (1988) (quoting United States v Ginsberg, 243 US 472, 474, 61 L Ed 853, 37 S Ct 422 (1917)).

Respondents are undoubtedly entitled to the benefit of those procedures which Congress has accorded them in the Reform Act. But there is no reason to believe that administrative appeals as provided in the Act—which simply have not been resorted to by these respondents before suing in the

[498 US 504]

District Court—would not have assured them compliance with statutory procedures. The Court never mentions what colorable constitutional claims these aliens, illegally present in the United States, could have had that demand judicial review. The most that can be said for respondents' case in this regard is that it is conceivable, though not likely, that the administrative processing of their claims could be handled in such a way as to deny them some constitutional right, and that the remedy of requesting deportation in order to obtain judicial review is a burdensome one. We have never held, however, that Congress may not, by explicit language, preclude judicial review of constitutional claims, and here, where that body was obviously interested in expeditiously processing an avalanche of claims from noncitizens upon whom it was conferring a substantial benefit, I think it may do so.

OPINION OF JUSTICE IN CHAMBERS

[498 US 1301]
ROBERT MADDEN, Applicant
v
TEXAS (No. A-626)

DAVID WAYNE DeBLANC, Applicant
v
TEXAS (No. A-627)

ALVIN URIAL GOODWIN, Applicant
v
TEXAS (No. A-628)

KARL HAMMOND, Applicant
v
TEXAS (No. A-635)

498 US 1301, 112 L Ed 2d 1026, 111 S Ct 902

[Nos. A-626, A-627, A-628, and A-635]

February 20, 1991.

Decision: Extensions of time to file petitions for writs of certiorari in capital murder cases granted for 30 days in 3 cases, and denied in 1 case, by Scalia, J.

SUMMARY

Under Rule 13.1 of the United States Supreme Court Rules, a petition for a writ of certiorari to review a state court judgment is timely if it is filed

SUBJECT OF ANNOTATION

Beginning on page 1278, infra

Time requirements under Supreme Court Rule 13 (and similar predecessors) for petitions for writ of certiorari within 90 days after the entry of that judgment; and under Rule 13.2, this period may be extended by a Justice of the Supreme Court for up to 60 days "for good cause shown." In four cases wherein the 90-day period for filing petitions for certiorari would expire on February 26, 1991, various attorneys affiliated with the Texas Resource Center, acting on behalf of individuals who had been convicted of murder and sentenced to death, applied on February 15, 1991, to Scalia, J.—as Circuit Justice for the Fifth Circuit—for 60-day extensions of time in which to file petitions for certiorari to the Court of Criminal Appeals of Texas. In No. A-626, wherein the convict was scheduled to be executed on February 28, 1991, the stated reason for requesting an extension was that the convict's appellate counsel (1) had never before prepared a certiorari petition on a capital case, and (2) required the assistance and guidance of colleagues to insure that important constitutional issues were properly researched and presented to the United States Supreme Court. In each of the other three cases, wherein executions had not yet been scheduled, the stated grounds for an extension of time was that the convict's previous counsel had withdrawn: in No. A-627, the prior counsel had withdrawn because of his having become a member of the United States Congress, and no new counsel had yet been located; in No. A-628, the prior counsel had withdrawn due to conflicting employment, and no new counsel had yet been located; and in No. A-635, the prior counsel had withdrawn for reasons not stated in the application, and the attorney signing the application stated that he intended to prepare the petition for certiorari but could not presently do so because of his father's recent death.

Scalia, J., as Circuit Justice, granted 30-day extensions in Nos. A-627, A-628, and A-635, and denied the application for an extension in No. A-626, for the reasons stated in headnotes 1 and 2 below.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal § 887 — certiorari — application for time extension — withdrawal of counsel

1a-1c. An individual Justice of the United States Supreme Court—in considering, as Circuit Justice, applications pursuant to Rule 13.2 of the United States Supreme Court Rules for 60-day extensions of time within which to file petitions for writs of certiorari to a state appellate court in three capital murder cases where the reason for such applications was the withdrawal of the defendants' previous appellate counsel—will grant 30-day extensions of the filing period in each case, but will not grant extensions in similar circumstances in the future, since (1) the withdrawal of appellate counsel does not automatically constitute "good cause" for an extension of the filing period within the meaning of Rule 13.2, and there is a particular need to reject such an automatic rule in capital cases, since no lawyer should be burdened with the knowledge that he or she need only withdraw from the case to lengthen the appeal and in all likelihood defer the execution of sentence; (2) there is no indication in any of the three cases that the withdrawal of appellate counsel—ascribed in the various applications to counsel's becoming a member of the United States Congress, to counsel's conflicting employment, or to no stated cause—was a reasonably unforeseeable occurrence, and membership in Congress was a factor that must have been anticipated before the date rehearing was denied in that case by the state appellate court and before the 90-day period for filing a petition began to run; and (3) although the death of replacement counsel's father, offered as a further justification in one case, would in some circumstances qualify as "good cause," the counsel in question was not one who had been working diligently on a petition and been prevented by the death from completing his work, but rather was an attorney affiliated with an organization—which attorney, because no other counsel had been found since the unexplained withdrawal of prior appellate counsel, had filed the application for an extension stating that he intended to prepare the defendant's petition but could not do so because of the death—and this application does not indicate why some other attorney with the organization could not have undertaken this last-minute task nor why the task has been left to the last minute; but (4) although none of these applications, as an original matter, would meet Rule 13.2's standard of "good cause shown" for the granting of an extension, there is good cause to grant 30-day extensions in these particular cases because (a) the Justice, who became Circuit Justice for the Circuit in which these cases arose only at the beginning of the current Supreme Court Term, had not previously had an opportunity to set forth his views on the application of the "good cause" standard of Rule 13.2, (b) it was possible that those views were more restrictive of extensions than the bar of that Circuit had been accustomed to, and (c) these were capital cases. [Per Scalia, J., as Circuit Justice.]

[See annotation p 1278, infra]

Appeal § 887 — certiorari — application for time extension — execution pending

2a, 2b. An individual Justice of the United States Supreme Court, as Circuit Justice, will deny an application pursuant to Rule 13.2 of the United States Supreme Court Rules for a 60-day extension of time within which to file a petition for a writ of certiorari to a state appellate court in a capital murder case—wherein the defendant was scheduled to be executed 2 days after the expiration of the regular 90-day period for filing a petition under Rule 13.1 of the Supreme Court Rules, and the stated reason for seeking an extension of time was that the defendant's counsel (1) had never before prepared a certiorari petition in a capital case, and (2) required the assistance and guidance of others to insure that the important constitutional issues in the case were properly researched and presented to the Supreme Court —because (1) the desire of counsel for assistance is unremarkable, as all petitioners can honestly claim that they would benefit from additional advice and consultation, and the application thus does not, as an original matter, meet Rule 13.2's standard of "good cause shown" for granting an extension; and (2) although the Justice has been willing to grant 30-day extensions in companion cases in which no execution dates had been set, even though he similarly found no "good cause" for extensions therein—on the ground that he had only recently been designated Circuit Justice for the Circuit in question and the local bar might be unaccustomed to his interpretation of the "good cause" standard—he would not do so in this case, as extending the period in which to file a petition for a writ of certiorari to a point after an established execution date is either futile or will disrupt the state's orderly administration of justice, and the Justice did not consider it appropriate to take such action as a Circuit Justice. [Per Scalia, J., as Circuit Justice.]

[See annotation p 1278, infra]

Appeal §§ 874.5, 887 — time for certiorari petition — extension — capital cases

3. Capital cases are not a generic exception to the 90-day time limit for filing a petition for a writ of certiorari to a state appellate court under Rule 13.1 of the United States Supreme Court Rules, and a Justice of the Supreme Court, as Circuit Justice, has no authority to create such an exception through the power conferred by Rule 13.2 of the Supreme Court Rules to grant case-by-case extensions for good cause shown. [Per Scalia, J., as Circuit Justice.]

[See annotation p 1278, infra]

OPINION

[498 US 1301]

Justice **Scalia,** Circuit Justice.

[1a, 2a] In each of these four cases, a lawyer affiliated with the Texas Resource Center, on behalf of an applicant convicted of capital murder and sentenced to death, has requested a 60-day

[498 US 1302]

extension of time in which to file a petition for a writ of certiorari to the Court of Criminal Appeals of Texas.

In No. A-626, the Texas court issued an opinion affirming the conviction and sentence of Robert Madden on September 12, 1990, and denied a petition for rehearing on November 28, 1990. The stated reason for the present extension request is that Madden's appellate counsel "has never before prepared a certiorari petition on a capital case" and requires the assistance of the Resource Center "to assist him and provide him with sufficient guidance to ensure that the important constitutional issues in [the] case are properly researched and presented to this Court." Madden is scheduled to be executed on February 28, 1991.

In No. A-627, the Texas court issued an opinion affirming the conviction and sentence of David Wayne DeBlanc on October 24, 1990, and denied a petition for rehearing on November 28, 1990. The stated reason for the present extension request is that "[f]ollowing the affirmance of [applicant's] conviction and sentence on appeal, Eden E. Harrington of the Texas Resource Center learned that [applicant's] appellate counsel, Craig Washington, would no longer represent Mr. DeBlanc because Mr. Washington is now a member of the United States Congress. The Texas Resource Center has tried to locate new volunteer counsel for [applicant] since November, 1990, but no new counsel has yet been located." DeBlanc's execution has not yet been scheduled.

In No. A-628, the Texas court issued an opinion affirming the conviction and sentence of Alvin Urial Goodwin on October 24, 1990, and denied a petition for rehearing on November 28, 1990. The stated reason for the present extension request is that "[f]ollowing the affirmance of [applicant's] conviction and sentence on appeal, [applicant's] appellate counsel, John D. McDonald, notified Eden E. Harrington of the Texas Resource Center that he could no longer represent Mr. Goodwin due to conflicting employment. The Texas

Resource Center has tried to locate new volunteer counsel for

[498 US 1303]

[applicant] since learning of Mr. McDonald's withdrawal, but no new counsel has yet been located." Goodwin's execution has not yet been scheduled.

In No. A-635, the Texas court issued an opinion affirming the conviction and sentence of Karl Hammond on October 31, 1990, and denied a petition for rehearing on November 28, 1990. The stated reason for the present extension request is that "[i]n November, 1990 the Texas Resource Center received notice that [applicant's] appellate attorney, David Weiner, was withdrawing from Mr. Hammond's case and could not prepare his petition for certiorari. Since that time, the Texas Resource Center has attempted to recruit new counsel for Mr. Hammond but has been unsuccessful. Therefore, undersigned counsel intends to prepare a petition for writ of certiorari on [applicant's] behalf and the Texas Resource Center will continue to try to locate new counsel to assist petitioner with his future appeals. Undersigned counsel, however, cannot prepare the petition for writ of certiorari . . . because of his father's recent death." Hammond's execution has not yet been scheduled.

The law states that "[t]he time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court." 28 USC § 2101(d) [28 USCS § 2101(d)]. Those rules provide that "[a] petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the Clerk of this Court within 90 days after the entry of the judgment," Rule 13.1. This period may be extended by a Justice of this Court "for good cause shown" for a period not to exceed 60 days, Rule 13.2, but an application for such an extension "is not favored," Rule 13.6. Any such application "must be submitted at least 10 days before the specified final filing date," Rule 30.2; applications "*received* less than 10 days before the final filing date" will not be granted "except in the most extraordinary circumstances," ibid. (emphasis added).

[498 US 1304]

The 90-day period for filing a petition for a writ of certiorari in each of these cases expires on February 26, 1991. Each of the present extension applications was sent via overnight courier on February 15, 1991 (the Friday preceding a 3-day holiday weekend), and received by the police officer on duty on Saturday, February 16, the last possible day under the 10-day rule.

In my view, none of these applications, as an original matter, would meet the standard of "good cause shown" for the granting of an extension. In No. A-626, the desire of Madden's appellate counsel for the assistance of the Texas Resource Center is entirely unremarkable; *all* petitioners can honestly claim that they would benefit from additional advice and consultation. Nor does the excuse put forward in the other three cases, namely, withdrawal of appellate counsel, automatically justify an extension of time. There is no indication in any of them that the withdrawal was a reasonably unforeseeable occurrence. Indeed, in DeBlanc's case, No. A-627, the factor requiring withdrawal (membership in the United States Congress) was of such a nature that it must have been anticipated before November 28, the date rehearing was denied. The application in Hammond's case, No. A-635, sets forth as additional justification the death of counsel's father—which would in some circumstances qualify as "good cause shown." The counsel in question, however, is not one who has been working diligently on the petition and has been prevented by the death from completing his work, but rather an attorney affiliated with the Resource Center who now, because no other counsel has been found since the unexplained withdrawal of appellate counsel, "intends to prepare" applicant's petition. There is no indication why some other attorney at the Resource Center could not have undertaken this last-minute task, nor why the task has been left to the last minute.

[1b, 3] All of these are capital cases. That class of case has not, however, been made a generic exception to our 90-day time [498 US 1305] limit, and I do not think I have authority to create such an exception through the power conferred upon me to grant case-by-case extensions for "good cause shown." As I have stated above, moreover, I do not consider that the withdrawal of appellate counsel automatically constitutes "good cause," without regard to its basis or predictability. There is even greater need to reject such an automatic rule in capital cases than there is elsewhere, since no lawyer should be burdened with the knowledge that, if he were only to withdraw from the case, his client's appeal could be lengthened and the execution of sentence, in all likelihood, deferred.

[1c, 2b] I became Circuit Justice for the Fifth Circuit at the beginning of the current Term. Because I have not previously had an opportunity in this capacity to set forth my views on application of the "good cause" standard of Rule 13.2; because it is possible that those views are more restrictive of extensions than what the Fifth Circuit bar has been accustomed to; and because these are capital cases; I find good cause to grant 30-day extensions in Nos. A-627, A-628, and A-635. I shall not grant extensions in similar circumstances again. I find inadequate cause to extend the filing period in No. A-626. In that case, Madden's execution date has been set for February 28, 1991, two days after the end of the regular 90-day filing period. Extending the period in which to file a petition for a writ of certiorari to a point after an established execution date is either futile or will disrupt the State's orderly administration of justice. I do not consider it appropriate for me to take such action as a Circuit Justice.

It is so ordered.

EDITOR'S NOTE

An annotation on "Time requirements under Supreme Court Rule 13 (and similar predecessors) for petitions for writ of certiorari," appears p 1278, infra.

MEMORANDUM CASES

No. 90-724. Walter Esposito, Petitioner v United States

498 US 1075, 112 L Ed 2d 1032, 111 S Ct 806.

January 31, 1991. The petition for writ of certiorari to the United States Court of Appeals for the Third Circuit in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 912 F2d 60.

No. 90-1091. In Re Arthur D. Jacobs, Petitioner

498 US 1076, 112 L Ed 2d 1032, 111 S Ct 806.

February 4, 1991. The petition for writ of mandamus in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

No. 90-868. Archem, Inc., Petitioner v Gerald Simo

498 US 1076, 112 L Ed 2d 1032, 111 S Ct 944.

February 8, 1991. The petition for writ of certiorari to the Court of Appeals of Indiana, First District, in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 549 NE2d 1054.

No. 90-5721. Pervis Tyrone Payne, Petitioner v Tennessee

498 US 1076, 112 L Ed 2d 1032, 111 S Ct 1407.

February 15, 1991. The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari to the Supreme Court of Tennessee, Western Division, are granted.* In addition to the questions presented by the petition, the parties are requested to brief and argue whether Booth v Maryland, 482 US 496, 96 L Ed 2d 440, 107 S Ct 2529 (1987), and South Carolina v Gathers, 490 US 805, 104 L Ed 2d 876, 109 S Ct 2207 (1989), should be overruled. The petitioner's opening brief is to be served and filed with the Clerk on or before March 18, 1991. Respondent's brief is to be served and filed with the Clerk on or before April 8, 1991. The case is set for oral argument during the April session.

Same case below, 791 SW2d 10.

Justice Stevens, with whom Justice Marshall and Justice Blackmun join, dissenting.

In my opinion, the Court's decision to expedite the consideration of this case and to ask the parties to address whether we should overrule Booth v Maryland, 482 US 496, 96 L Ed 2d 440, 107 S Ct 2529 (1987), and South Carolina v Gathers, 490 US 805, 104 L Ed 2d 876, 109 S Ct 2207

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* Editor's Note: For amendment of this order, see 112 L Ed 2d, at page 1038, infra.

(1989), a question presented neither in the petition for certiorari nor in the response, is both unwise and unnecessary. Cf. Patterson v McLean Credit Union, 485 US 617, 622-623, 99 L Ed 2d 879, 108 S Ct 1419 (1988) (Stevens, J. dissenting). Moreover, the Court's decision to review the alleged Booth error in this case would be inappropriate in any event because the decision below rested alternatively on the ground that any Booth violation that might have occurred was harmless beyond a reasonable doubt. See State v Payne, 791 SW2d 10, 19 (Tenn 1990).

Accordingly, I respectfully dissent.

No. 90-459. Phyllis Schmidt, et vir, Petitioners v United States

498 US 1077, 112 L Ed 2d 1033, 111 S Ct 944.

February 19, 1991. On petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of Irwin v Department of Veterans Affairs, 498 US 89, 112 L Ed 2d 435, 111 S Ct 453 (1990).

Same case below, 901 F2d 680.

No. 90-729. Communications Workers of America, Petitioner v Madeline Montano

498 US 1077, 112 L Ed 2d 1033, 111 S Ct 944.

February 19, 1991. On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Ninth Circuit with directions to dismiss. United States v Munsingwear, Inc., 340 US 36, 95 L Ed 36, 71 S Ct 104 (1950).

Same case below, 902 F2d 40.

No. 90-605. Department of Transportation, et al., Petitioners v Air Transport Association of America, et al.

498 US 1077, 112 L Ed 2d 1033, 111 S Ct 944.

February 19, 1991. On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. The judgment is vacated and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit to consider the question of mootness.

No. 90-1028. Michigan, Petitioner v Kevin Lamont Ambers

498 US 1077, 112 L Ed 2d 1033, 111 S Ct 1019.

February 19, 1991. It appearing that respondent died September 12, 1989, the petition for a writ of certiorari is dismissed.

No. ——. Douglas Ray Stankewitz, Petitioner v California

498 US 1077, 112 L Ed 2d 1034, 111 S Ct 944.

February 19, 1991. The motion for leave to proceed in forma pauperis without an affidavit of indigency executed by the petitioner is granted. The motion to seal the motion for leave to proceed in forma pauperis is denied.

No. A-562. Eric Chen, Applicant v United States

498 US 1077, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. The application for release or for bail, addressed to Justice Kennedy and referred to the Court, is denied.

No. A-587. Leonard A. Pelullo, Applicant v Harry J. Gerardi, et al.

498 US 1078, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. The application for stay, addressed to Justice Stevens and referred to the Court, is denied.

No. A-605. Frota Oceanica Brasileira, S.A., Applicant v S. M. Pires, et ux.

498 US 1078, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. The application for a supersedeas bond or stay of execution of judgment of the Supreme Court of New York, County of New York, presented to Justice Marshall, and by him referred to the Court, is denied.

No. D-951. In the Matter of Grant Paul Jones

498 US 1078, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. A response to the rule to show cause having been filed, it is ordered that the rule to show cause is hereby discharged, and the order heretofore entered November 5, 1990, suspending respondent from the practice of law in this Court is vacated.

No. D-955. In the Matter of Disbarment of Kenneth E. Bruce

498 US 1078, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. The motion to defer is granted.

No. D-957. In the Matter of Disbarment of Albert Francis Pennisi

498 US 1078, 112 L Ed 2d 1034, 111 S Ct 945.

February 19, 1991. Disbarment order entered.

No. 9, Original. United States, Plaintiff v State of Louisiana, et al.

498 US 1078, 112 L Ed 2d 1035, 111 S Ct 946.

February 19, 1991. The motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is allowed a total of $5,721.01, one-half to be paid by the United States and one-half to be paid by Mississippi. The request of the Special Master to be discharged is granted, and Walter P. Armstrong, Jr., is hereby discharged with the thanks of the Court. Justice Marshall took no part in the consideration or decision of these orders.

No. 65, Original. State of Texas, Plaintiff v State of New Mexico

498 US 1078, 112 L Ed 2d 1035, 111 S Ct 946.

February 19, 1991. The second motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is allowed a total of $30,391.20 for the period of September 1, 1989, through January 23, 1991, to be paid equally by the parties. The request of the Special Master to be discharged is granted, and Monte Pasco is hereby discharged with the thanks of the Court.

No. 109, Original. State of Oklahoma and State of Texas, Plaintiffs v State of New Mexico

498 US 1078, 112 L Ed 2d 1035, 111 S Ct 946.

February 19, 1991. The Exceptions to the Report of the Special Master set for oral argument in due course.

No. 113, Original. State of Mississippi, Plaintiff v United States

498 US 1079, 112 L Ed 2d 1035, 111 S Ct 946.

February 19, 1991. The motion of the Special Master for compensation and reimbursement of expenses is granted, and the Special Master is allowed a total of $20,518.71 to be paid equally by the parties. The request of the Special Master to be discharged is granted, and Walter P. Armstrong, Jr., is hereby discharged with the thanks of the Court.

No. 89-1821. Charles Z. Stevens, III, Petitioner v Department of the Treasury, et al.

498 US 1079, 112 L Ed 2d 1035, 111 S Ct 946.

February 19, 1991. The motion of the Solicitor General to permit Amy L. Wax, Esq., to present oral argument pro hac vice is granted.

No. 89-1905. Wisconsin Public Intervenor, et al., Petitioners v Ralph Mortier, et al.

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 947.

February 19, 1991. The motion of petitioners to dispense with printing the joint appendix is granted.

No. 89-7662. Roger Keith Coleman, Petitioner v Charles E. Thompson, Warden

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 947.

February 19, 1991. Further consideration of the motion of petitioner to strike nonrecord material is deferred to the hearing of the case on the merits.

No. 90-18. Robert D. Gilmer, Petitioner v Interstate/Johnson Lane Corporation

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 947.

February 19, 1991. The motion of respondent for leave to file a supplemental brief after argument is granted.

No. 90-50. Ellis Gregory, Jr., and Anthony P. Nugent, Jr., Judges, Petitioners v John D. Ashcroft, Governor of the State of Missouri

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 947.

February 19, 1991. The motion of John W. Keefe for leave to participate in oral argument as amicus curiae, for divided argument, and for additional time for oral argument is denied.

No. 90-149. Michigan, Petitioner v Nolan K. Lucas

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 947.

February 19, 1991. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 90-516. Jill S. Kamen, Petitioner v Kemper Financial Services, Inc., et al.

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 948.

February 19, 1991. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 90-622. Florida, Petitioner v Enio Jimeno, et al.

498 US 1079, 112 L Ed 2d 1036, 111 S Ct 948.

February 19, 1991. The motion of petitioner to dispense with printing the joint appendix is granted. The motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument is granted.

No. 90-762. Thomas Freytag, et al., Petitioners v Commissioner of Internal Revenue

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 948.

February 19, 1991. The motion of Erwin N. Griswold for leave to appear as amicus curiae is granted. The motion of Erwin N. Griswold for leave to file amicus curiae brief at the time the brief for respondent is filed is denied. The motion of Erwin N. Griswold for leave to participate in oral argument as amicus curiae and for divided argument is denied.

No. 90-870. Society National Bank, et al., Petitioners v Robert Warren, et ux.

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 948.

February 19, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-872. Yellow Bus Lines, Inc., Petitioner v Drivers, Chauffeurs & Helpers Local Union 639, et al.

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 948.

February 19, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-891. Charles White, et al., Petitioners v Raymond S. Daniel, et al.

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 949.

February 19, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-918. Christine Franklin, Petitioner v Gwinnett County Public Schools and William Prescott

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 949.

February 19, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-1029. Eastman Kodak Company, Petitioner v Image Technical Services, Inc., et al.

498 US 1080, 112 L Ed 2d 1037, 111 S Ct 949.

February 19, 1991. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 90-5721. Pervis Tyrone Payne, Petitioner v Tennessee

498 US 1080, 112 L Ed 2d 1038, 111 S Ct 1031.

February 19, 1991. The order entered February 15, 1991, is amended as follows:

The motion of petitioner for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari to the Supreme Court of Tennessee, Western Division, is granted limited to Question 2 presented by the petition. In addition to Question 2 presented by the petition, the parties are requested to brief and argue whether Booth v Maryland, 482 US 496, 96 L Ed 2d 440, 107 S Ct 2529 (1987), and South Carolina v Gathers, 490 US 805, 104 L Ed 2d 876, 109 S Ct 2207 (1989), should be overruled. The petitioner's opening brief is to be served and filed with the Clerk on or before March 18, 1991. Respondent's brief is to be served and filed with the Clerk on or before April 8, 1991. The case is set for oral argument during the April session.

As to dissenting opinion by Justice Stevens, with whom Justice Marshall and Justice Blackmun join, see 112 L Ed 2d, at page 1032.

No. 90-6951. Robert Charles Comer, Petitioner v Arizona

498 US 1080, 112 L Ed 2d 1038, 111 S Ct 949.

February 19, 1991. The motion of petitioner to consolidate this case with No. 90-5551, Schad v Arizona, is denied.

No. 89-1290. Robert R. Freeman, et al., Petitioners v Willie Eugene Pitts, et al.

498 US 1081, 112 L Ed 2d 1038, 111 S Ct 949.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit granted.

Same case below, 887 F2d 1438.

No. 90-741. Aletha Dewsnup, Petitioner v Louis L. Timm, et al.

498 US 1081, 112 L Ed 2d 1038, 111 S Ct 949.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit granted.

Same case below, 908 F2d 588.

No. 90-848. Kenneth Hilton, Petitioner v South Carolina Public Railways Commission

498 US 1081, 112 L Ed 2d 1038, 111 S Ct 950.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of South Carolina granted.

Same case below, 411 SE2d 424.

No. 90-889. William "Sky" King, Petitioner v St. Vincent's Hospital

498 US 1081, 112 L Ed 2d 1039, 111 S Ct 950.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit granted.

Same case below, 901 F2d 1068.

No. 90-925. Immigration and Naturalization Service, Petitioner v Joseph Patrick Doherty

498 US 1081, 112 L Ed 2d 1039, 111 S Ct 950.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 908 F2d 1108.

No. 90-1059. Simon & Schuster, Inc., Petitioner v Members of the New York State Crime Victims Board, et al.

498 US 1081, 112 L Ed 2d 1039, 111 S Ct 950.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.

Same case below, 916 F2d 777.

No. 90-954. Robert C. Rufo, Sheriff of Suffolk County, et al., Petitioners v Inmates of the Suffolk County Jail, et al.

No. 90-1004. George C. Vose, Commissioner of Correction of Massachusetts, Petitioner v Inmates of the Suffolk County Jail, et al.

498 US 1081, 112 L Ed 2d 1039, 111 S Ct 950.

February 19, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the First Circuit granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Same cases below, 915 F2d 1557.

No. 90-967. Guy Wooddell, Jr., Petitioner v International Brotherhood of Electrical Workers, Local 71, et al.

498 US 1082, 112 L Ed 2d 1039, 111 S Ct 951.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted limited to Questions 1 and 2 presented by the petition.

[This order was modified on March 21, 1991. See 113 L Ed 2d, at p 440.]

Same case below, 907 F2d 151.

No. 90-6352. Diane Griffin, Petitioner v United States

498 US 1082, 112 L Ed 2d 1039, 111 S Ct 951, reh den (US) 117 L Ed 2d 484, 112 S Ct 1253.

February 19, 1991. Motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit granted.

Same case below, 913 F2d 337.

No. 89-1698. School District No. 1, Denver, Colorado, et al., Petitioners v Wilfred Keyes, et al.

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 951.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 895 F2d 659.

No. 89-1772. David Galceran and Ed Teel, Petitioners v Edward Joseph Harding

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 951.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 889 F2d 906.

No. 90-497. James Williams, Petitioner v James A. Chrans, Warden, and Neil F. Hartigan, Attorney General of Illinois

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 951.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 907 F2d 152.

No. 90-529. Richard L. Miller, et al., Petitioners v Donald Rice, Secretary of the Air Force, et al.

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 952.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 907 F2d 957.

No. 90-559. American Iron and Steel Institute, Petitioner v United States Environmental Protection Agency, et al.

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 952.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 136, 902 F2d 962.

No. 90-578. Alta Verde Industries, Inc., et al., Petitioners v United States

498 US 1082, 112 L Ed 2d 1040, 111 S Ct 952.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 907 F2d 158.

No. 90-594. North Bay Development Disabilities Services, Inc., dba North Bay Regional Center, Petitioner v National Labor Relations Board

498 US 1082, 112 L Ed 2d 1041, 111 S Ct 952.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 371, 905 F2d 476.

No. 90-620. Massillon Board of Education, Petitioner v Therese A. Farber

498 US 1082, 112 L Ed 2d 1041, 111 S Ct 952.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 1391.

No. 90-652. Daniel J. O'Connor, Petitioner v United States

498 US 1082, 112 L Ed 2d 1041, 111 S Ct 953.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 910 F2d 1466.

No. 90-664. Quality Inns International, Inc., et al., Petitioners v L. B. H. Associates Limited Partnership, et al.

498 US 1083, 112 L Ed 2d 1041, 111 S Ct 953.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 724.

No. 90-669. Philadelphia Marine Trade Association, Petitioner v Local 1291, International Longshoremen's Association, AFL-CIO, et al.

498 US 1083, 112 L Ed 2d 1041, 111 S Ct 953.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 754.

No. 90-675. Cinema Blue of Charlotte, Inc., et al., Petitioners v North Carolina

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 953.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of North Carolina denied.

Same case below, 98 NC App 628, 392 SE2d 136.

No. 90-678. Leslie R. Barth, Petitioner v United States

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 953.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 899 F2d 199.

No. 90-692. Victor Rogers, et al., Petitioners v Federal Deposit Insurance Corporation, as Receiver for First RepublicBank Houston, N.A., et al.

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 954.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 1523.

No. 90-705. Clipper City Lodge No. 516, Petitioner v National Labor Relations Board

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 954.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 909 F2d 963.

No. 90-718. Jack R. Duckworth, Superintendent, Indiana State Prison, et al., Petitioners v Herman C. Bernard

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 954.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-735. Michael S. Bluestein, et al., Petitioners v Samuel K. Skinner, Secretary of Transportation, et al.

498 US 1083, 112 L Ed 2d 1042, 111 S Ct 954.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 451.

No. 90-740. Dakota Cheese, Inc., and James Dee, Petitioners v United States

498 US 1083, 112 L Ed 2d 1043, 111 S Ct 954.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 906 F2d 335.

No. 90-744. Omar I. Gonzales, Petitioner v United States

498 US 1083, 112 L Ed 2d 1043, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-745. Linda Wheeler Tarpeh-Doe, Individually and as Mother and Next Friend of Nyenpan Tarpeh-Doe, et al., Petitioners v United States, et al.

498 US 1083, 112 L Ed 2d 1043, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 284 App DC 263, 904 F2d 719.

No. 90-748. David Jack Vogt, Jr., Petitioner v United States

498 US 1083, 112 L Ed 2d 1043, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 910 F2d 1184.

No. 90-759. Clarence E. Crayton, et al., Petitioners v Prichard Housing Authority, et al.

498 US 1084, 112 L Ed 2d 1043, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 903 F2d 829.

No. 90-760. Mark Carden McNutt, Petitioner v United States

498 US 1084, 112 L Ed 2d 1043, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 908 F2d 561.

No. 90-763. Mark T. Frey and Christine L. Frey, Petitioners v United States

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 955.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 738.

No. 90-770. Ted Kozera, et al., Petitioners v Westchester-Fairfield Chapter of National Electrical Contractors Association, Inc., et al.

No. 90-1061. Local Union No. 501 of International Brotherhood of Electrical Workers, AFL-CIO, Petitioner v Westchester-Fairfield Chapter of National Electrical Contractors Association, Inc., et al.

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 956.

February 19, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same cases below, 909 F2d 48.

No. 90-774. Dan M. Linkous, Petitioner v Thomas J. Stovall, et al.

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 956.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-797. Gas Spring Co., Petitioner v National Labor Relations Board

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 956.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 966.

No. 90-798. John A. Thompson, Petitioner v United States

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 956.

February 19, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 31 MJ 168.

No. 90-806. City of Willcox, Arizona, et al., Petitioners v Federal Energy Regulatory Commission, et al.

498 US 1084, 112 L Ed 2d 1044, 111 S Ct 957.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 286 App DC 142, 912 F2d 1496.

No. 90-816. Kayser-Roth Corporation, Petitioner v United States

498 US 1084, 112 L Ed 2d 1045, 111 S Ct 957.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 910 F2d 24.

No. 90-819. John Carr, et al., Petitioners v Pacific Maritime Association, et al.

498 US 1084, 112 L Ed 2d 1045, 111 S Ct 957.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 904 F2d 1313.

No. 90-826. Lionel Marquez, Petitioner v United States

498 US 1084, 112 L Ed 2d 1045, 111 S Ct 957.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 738.

No. 90-832. Rudolph P. Kurowski, Petitioner v City of Bridgeport, Connecticut, et al.

498 US 1085, 112 L Ed 2d 1045, 111 S Ct 958.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 909 F2d 1472.

No. 90-833. Rudolph P. Kurowski, Petitioner v City of Bridgeport, Connecticut, et al.

498 US 1084, 112 L Ed 2d 1045, 111 S Ct 957.

February 19, 1991. Petition for writ of certiorari to the Appellate Court of Connecticut denied.

Same case below, 21 Conn App 28, 571 A2d 127.

No. 90-842. Air Wisconsin Pilots Protection Committee, et al., Petitioners v Clifford R. Sanderson, Trustee, et al.

498 US 1085, 112 L Ed 2d 1045, 111 S Ct 958.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 909 F2d 213.

No. 90-844. Howard Electrical & Mechanical, Inc., and Howard Systems, Inc., Petitioners v Trustees of the Colorado Pipe Industry Pension Trust

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 958.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 909 F2d 1379.

No. 90-847. William Pymm, et al., Petitioners v New York

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 958.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of New York denied.

Same case below, 76 NY2d 511, 561 NYS2d 687, 563 NE2d 1.

No. 90-855. Lumbermen's Underwriting Alliance, Petitioner v Atlantic Wood Industries, Inc.

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 958.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Georgia denied.

Same case below, 196 Ga App 503, 396 SE2d 541.

No. 90-856. Wayne Kunz, et al., Petitioners v Utah Power & Light Co.

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 913 F2d 599.

No. 90-869. Joseph A. Mayercheck, Petitioner v Ellen Woods

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, denied.

Same case below, 398 Pa Super 652, 573 A2d 626.

No. 90-874. Schering-Plough Corporation, et al., Petitioners v Ray F. Albano

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 384.

No. 90-880. Snap-on Tools Corporation, et al., Petitioners v James F. Boyer, et ux.

498 US 1085, 112 L Ed 2d 1046, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the Third Circuit denied.

Same case below, 913 F2d 108.

No. 90-884. Gahlon W. Kunkle, et al., Petitioners v Fulton County Board of Commissioners, et al.

498 US 1085, 112 L Ed 2d 1047, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-888. Arthur L. Morgan, Petitioner v United States

498 US 1085, 112 L Ed 2d 1047, 111 S Ct 959.

February 19, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 31 MJ 43.

No. 90-895. G. Murray Turner, Petitioner v Leon E. Jones, Sr., et al.

498 US 1085, 112 L Ed 2d 1047, 111 S Ct 960.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 911 F2d 732.

No. 90-897. Glen Cade, t/a G & G Towing, et al., Petitioners v Montgomery County, Maryland, et al.

498 US 1085, 112 L Ed 2d 1047, 111 S Ct 960.

February 19, 1991. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 83 Md App 419, 575 A2d 744.

No. 90-901. Donald K. Alexander, Petitioner v Evans & Dixon Law Firm, et al.

498 US 1086, 112 L Ed 2d 1047, 111 S Ct 960, reh den (US) 113 L Ed 2d 670, 111 S Ct 1609.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 923 F2d 858.

No. 90-902. Robert O. Lampl, Petitioner v Four D Manufacturing Company, et al.

498 US 1086, 112 L Ed 2d 1047, 111 S Ct 960.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 243.

No. 90-903. John W. Evans and the Estate of L. Juanita Evans, Petitioners v Twin Falls County, et al.

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 960.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Idaho denied.

Same case below, 118 Idaho 210, 796 P2d 87.

No. 90-908. E. D. Christensen, Petitioner v Internal Revenue Service

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-912. Zetta C. Farris, Petitioner v Office of Personnel Management

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 914 F2d 270.

No. 90-915. Julian I. Richards, Petitioner v Suburban Trust Company, et al.

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961.

February 19, 1991. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 78 Md App 719.

No. 90-919. Evelyn D. Reel and Willard D. Reel, Petitioners v Commissioner of Internal Revenue

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961, reh den (US) 114 L Ed 2d 130, 111 S Ct 2046.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 1484.

No. 90-923. Billy Lamb and Carmon Willis, Petitioners v Philip Morris, Incorporated, et al.

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1024.

No. 90-924. Guadalupe Ramos, Petitioner v Nicholas F. Brady, Secretary of the Treasury

498 US 1086, 112 L Ed 2d 1048, 111 S Ct 961.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 692.

No. 90-927. County of Los Angeles, Petitioner v Daniel E. Bratt, et al.

498 US 1086, 112 L Ed 2d 1049, 111 S Ct 962.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 1066.

No. 90-928. Marvin Steil, Petitioner v Joseph Lieberman and Laura Cahill

498 US 1086, 112 L Ed 2d 1049, 111 S Ct 962.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 708.

No. 90-934. Abel H. Hernandez, Petitioner v Donald B. Rice, Secretary of the Air Force

498 US 1086, 112 L Ed 2d 1049, 111 S Ct 962.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 902 F2d 386.

No. 90-936. Peter Bardunias, et al., Petitioners v County of Westchester, et al.

498 US 1086, 112 L Ed 2d 1049, 111 S Ct 962.

February 19, 1991. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 158 App Div 2d 679, 552 NYS2d 134.

No. 90-939. Veda Nayak, Petitioner v MCA, Inc., et al.

498 US 1087, 112 L Ed 2d 1049, 111 S Ct 962.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 1082.

No. 90-941. Town of Sunnyvale, Texas, Petitioner v Charles Mayhew, Sr., et al.

498 US 1087, 112 L Ed 2d 1049, 111 S Ct 963.

February 19, 1991. Petition for

writ of certiorari to the Court of Appeals of Texas, Fifth District, denied.

Same case below, 774 SW2d 284.

No. 90-942. Jerome B. Rosenthal, Petitioner v Allen Broussard, Acting Chief Justice, Supreme Court of California, et al.

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 963.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 910 F2d 561.

No. 90-943. Joe Clark, Petitioner v Western Union Telegraph Company

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 963.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 914 F2d 260.

No. 90-946. S & M Investment Co., Petitioner v Tahoe Regional Planning Agency

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 963.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 324.

No. 90-948. Charles C. McCarthy, Petitioner v Lott Mayo Prince, Jr.

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 963.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-950. Donald E. Roth, Petitioner v Harry Stussie, Judge, St. Louis County Circuit Court, et al.

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 963.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Missouri, Eastern District, denied.

Same case below, 793 SW2d 567.

No. 90-957. Garie Negron, Petitioner v Banco de Ponce

498 US 1087, 112 L Ed 2d 1050, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the Second Circuit denied.

Same case below, 923 F2d 842.

No. 90-958. George S. Nonnette, et al., Petitioners v California

498 US 1087, 112 L Ed 2d 1051, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, Third Appellate District, denied.

Same case below, 221 Cal App 3d 659, 271 Cal Rptr 329.

No. 90-960. James C. Cathey, et ux., Petitioners v Dow Chemical Company Medical Care Program

498 US 1087, 112 L Ed 2d 1051, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 907 F2d 554.

No. 90-961. Ervin B. Madden, Petitioner v ITT Long Term Disability Plan for Salaried Employees, et al.

498 US 1087, 112 L Ed 2d 1051, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 1279.

No. 90-963. Edward Walsh, Trustee of the Bankruptcy Estate of George M. Jewell and Laura E. Jewell, Petitioner v Bank of America, N. T. & S. A.

498 US 1087, 112 L Ed 2d 1051, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

Same case below, 220 Cal App 3d 613, 269 Cal Rptr 596.

No. 90-969. Eric J. Phelps, Petitioner v Pennsylvania

498 US 1088, 112 L Ed 2d 1051, 111 S Ct 964.

February 19, 1991. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 388 Pa Super 624, 566 A2d 303.

No. 90-973. Sidwell Company, Petitioner v Real Estate Data, Inc.

498 US 1088, 112 L Ed 2d 1051, 111 S Ct 965.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 907 F2d 770.

No. 90-975. Mid-County Motors, Inc., Petitioner v United States

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 965.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 891 F2d 278.

No. 90-977. RPM Management Company, Inc., et al., Petitioners v Robert Chowning, et al.

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 965.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Arkansas denied.

Same case below, 31 Ark App xx.

No. 90-979. Veon Garrison, Petitioner v City of Indianapolis, et al.

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 965.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-981. Securities Management and Research, Inc., et al., Petitioners v Clinton P. Swift, et al.

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 965.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-982. Ranbir S. Sahni, Petitioner v Harbor Insurance Company, et al.

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 1271.

No. 90-986. Armco Export Sales Corporation, et al., Petitioners v Comptroller of the Treasury of Maryland

498 US 1088, 112 L Ed 2d 1052, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 82 Md App 429, 572 A2d 562.

No. 90-989. Caldor, Inc., Petitioner v Mary M. Heslin, Commissioner of Consumer Protection, et al.

498 US 1088, 112 L Ed 2d 1053, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 215 Conn 590, 577 A2d 1009.

No. 90-995. Virginia C. Wright, Petitioner v Arlington County Department of Social Services

498 US 1088, 112 L Ed 2d 1053, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Virginia denied.

No. 90-999. Darryl S. Jacobs, Petitioner v United States

498 US 1088, 112 L Ed 2d 1053, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 31 MJ 138.

No. 90-1001. Michael T. Westmoreland, Petitioner v United States

498 US 1088, 112 L Ed 2d 1053, 111 S Ct 966.

February 19, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 31 MJ 160.

No. 90-1005. Lloyd Baker, Petitioner v Mecklenburg County, North Carolina, et al.

498 US 1088, 112 L Ed 2d 1053, 111 S Ct 967.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 463.

No. 90-1007. Bank of America National Trust and Savings Association, Petitioner v Superior Court of the City and County of San Francisco (George Walters, Real Party in Interest)

498 US 1089, 112 L Ed 2d 1053, 111 S Ct 967.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-1009. Egbert Bagg, IV, et al., Petitioners v New York Department of Environmental Conservation

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 967.

February 19, 1991. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 151 App Div 2d 34, 546 NYS2d 470.

No. 90-1016. Consolidated City of Jacksonville, Duval County, Florida, Petitioner v Winston Nash

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 967.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 355.

No. 90-1017. Basin Electric Power Cooperative, Petitioner v Crum & Forster Managers Corporation of New York, dba International Insurance Company

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 967.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 911 F2d 155.

No. 90-1018. International Society for Krishna Consciousness of California, Inc., et al., Petitioners v Board of Equalization of California

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 968.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-1021. Peter Sugar, et al., Petitioners v Diamond Mortgage Corporation of Illinois, et al.

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 968.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 913 F2d 1233.

No. 90-1022. Connecticut, Petitioner v James Y. Hope

498 US 1089, 112 L Ed 2d 1054, 111 S Ct 968.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Connecticut denied.

Same case below, 215 Conn 570, 577 A2d 1000.

No. 90-1023. William Kuntz, III, Petitioner v Society Bank, N.A.

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 968.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Montgomery County, denied.

No. 90-1024. John L. Vidakovich, Petitioner v United States

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 968.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 911 F2d 435.

No. 90-1026. Norman R. Evonuk, Petitioner v Oregon

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 969.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 919 F2d 144.

No. 90-1030. Kenneth A. Kozel, Petitioner v United States

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 969.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 205.

No. 90-1031. Jack Haller, Petitioner v Donald Borror, et al.

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 969.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 1494.

No. 90-1033. Robert Bradley and Norman Speck, Petitioners v United States

498 US 1089, 112 L Ed 2d 1055, 111 S Ct 969.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1482.

No. 90-1034. Johnny C. Cooksey, Petitioner v Paul B. Cohen, Assistant General Counsel of the State Bar of Georgia, et al.

498 US 1090, 112 L Ed 2d 1055, 111 S Ct 969.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 269.

No. 90-1035. Kenneth B. Quansah, Jr., Petitioner v City of San Jose, California, et al.

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 969.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 902 F2d 40.

No. 90-1036. Roger Atkinson, et al., Petitioners v IHC Hospitals, Inc., aka Intermountain Health Care Hospitals, Inc., et al.

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 970.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Utah denied.

Same case below, 798 P2d 733.

No. 90-1048. Alexander Malick, Petitioner v Sandia Corporation

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 970.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 1496.

No. 90-1051. J. P. Tristani, et al., Petitioners v Eastern Air Lines, Inc., et al.

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 970.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 920 F2d 939.

No. 90-1053. Medical Protective Company, Petitioner v Fletcher Bell

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 970.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 912 F2d 244.

No. 90-1057. Marcie McIntire, Petitioner v Minnesota, et al.

498 US 1090, 112 L Ed 2d 1056, 111 S Ct 970, reh den (US) 113 L Ed 2d 671, 111 S Ct 1609.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Minnesota denied.

Same case below, 458 NW2d 714.

No. 90-1060. Robert A. Holliday, Petitioner v Consolidated Rail Corporation

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 970.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 421.

No. 90-1082. Hettie M. Minnicks, Executrix of the Succession of Stephen A. Mistich, Petitioner v Brandon L. Mistich, et al.

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 971.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of Louisiana, Fourth Circuit, denied.

No. 90-1085. Alfred Giuffrida, Petitioner v United States

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 971, reh den (US) 113 L Ed 2d 671, 111 S Ct 1609.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 914 F2d 1527.

No. 90-1100. David J. Heldstab, Petitioner v Frank Liska, et al.

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 971.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 911 F2d 736.

No. 90-1103. Lynn Beaucoudray, et vir, Individually and on Behalf of Their Minor Child, Ann Mary Kelty, Petitioners v Douglas D. Green, et al.

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 971, reh den (US) 113 L Ed 2d 671, 111 S Ct 1609.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of Louisiana, Fourth Circuit, denied.

Same case below, 559 So 2d 907.

No. 90-1110. Mike Britt, Petitioner v United States

498 US 1090, 112 L Ed 2d 1057, 111 S Ct 971.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 917 F2d 353.

No. 90-1116. Lawrence S. Krain, Petitioner v Ronald George, Laughlin Waters, George Deukmejian, Ralph Geffen, and John G. Davies; and Lawrence S. Krain, Petitioner v University of Michigan Hospital, et al.

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

No. 90-1138. Saverio Moreno, Petitioner v United States Drug Enforcement Administration

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 808.

No. 90-1161. Thomas D. Sikes, Petitioner v United States

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1466.

No. 90-1170. Richard Roger Garcia, Petitioner v United States

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 899 F2d 1226.

No. 90-1172. Anna Lou Stuckey, Petitioner v United States

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 917 F2d 1537.

No. 90-1180. Frank J. Camoscio, Petitioner v Board of Registration in Podiatry

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 972.

February 19, 1991. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 408 Mass 1001, 561 NE2d 516.

No. 90-1183. Nathan Boatner, Petitioner v United States, et al.

498 US 1091, 112 L Ed 2d 1058, 111 S Ct 973.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 261.

No. 90-5590. Haskell Watson, Petitioner v United States

No. 90-5771. Herman Curry, Petitioner v United States

No. 90-5824. Jeffrey Lynn Howard, Petitioner v United States

No. 90-6082. Ronald Jerome Hayes, Petitioner v United States

498 US 1091, 112 L Ed 2d 1059, 111 S Ct 973.

February 19, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 902 F2d 912.

No. 90-5663. James Steeley, Petitioner v Alabama

498 US 1091, 112 L Ed 2d 1059, 111 S Ct 974.

February 19, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 567 So 2d 397.

No. 90-5723. James Steeley, Petitioner v Alabama

498 US 1091, 112 L Ed 2d 1059, 111 S Ct 974.

February 19, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Alabama denied.

Same case below, 567 So 2d 398.

No. 90-5737. Russell Tinsley, Petitioner v Bob Borg, Warden

498 US 1091, 112 L Ed 2d 1059, 111 S Ct 974.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 895 F2d 520.

No. 90-5783. Stanley Joseph Callis, Petitioner v Edward W. Murray, Director, Virginia Department of Corrections, et al.

498 US 1091, 112 L Ed 2d 1059, 111 S Ct 974, reh den (US) 113 L Ed 2d 461, 111 S Ct 1406.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 908 F2d 966.

No. 90-5804. Calvin Black, Petitioner v United States

498 US 1091, 112 L Ed 2d 1060, 111 S Ct 974.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 904 F2d 1026.

No. 90-5807. Ronald Daren Red Bear, Petitioner v United States

498 US 1091, 112 L Ed 2d 1060, 111 S Ct 974.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 909 F2d 511.

No. 90-5819. Jack Harper Bell, Petitioner v California

498 US 1092, 112 L Ed 2d 1060, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, denied.

No. 90-5850. Clifton J. Shedelbower, Petitioner v Wayne Estelle, Warden

498 US 1092, 112 L Ed 2d 1060, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 885 F2d 570.

No. 90-5907. Michael Stanley, Petitioner v Pennsylvania

498 US 1092, 112 L Ed 2d 1060, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the Superior Court of Pennsylvania, Philadelphia Office, denied.

Same case below, 395 Pa Super 656, 570 A2d 591.

No. 90-5924. Jesse Ellis Clark, Petitioner v W.D. Nichols, et al.

498 US 1092, 112 L Ed 2d 1060, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-5936. Rafael Santos Hernandez, Petitioner v United States

498 US 1092, 112 L Ed 2d 1060, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 897 F2d 47.

No. 90-5959. Angel S. Perez-Morales, Petitioner v United States

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 975.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 905 F2d 483.

No. 90-5968. Robert Eldridge Marshall, Petitioner v United States

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 910 F2d 1241.

No. 90-5978. Alberto Gomez, Petitioner v United States

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1513.

No. 90-6002. Anthony MacKenzie, Petitioner v United States

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6027. Benjamin Prieto, Petitioner v John Gluch, Warden, et al.

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 913 F2d 1159.

No. 90-6034. Michael Allen Sanders, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 1092, 112 L Ed 2d 1061, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 905 F2d 1542.

No. 90-6043. Jose Ernesto Leon, Petitioner v United States

498 US 1092, 112 L Ed 2d 1062, 111 S Ct 976.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 1561.

No. 90-6048. David Ware, Petitioner v Missouri

498 US 1092, 112 L Ed 2d 1062, 111 S Ct 977, reh den (US) 113 L Ed 2d 671, 111 S Ct 1610.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Missouri, Eastern District, denied.

Same case below, 793 SW2d 412.

No. 90-6064. Philip Reid Payne, Petitioner v North Carolina

498 US 1092, 112 L Ed 2d 1062, 111 S Ct 977.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of North Carolina denied.

Same case below, 327 NC 194, 394 SE2d 158.

No. 90-6071. Charles E. Bullard, Petitioner v United States

498 US 1092, 112 L Ed 2d 1062, 111 S Ct 977.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6076. Herman Edward Lane, Petitioner v United States

498 US 1093, 112 L Ed 2d 1062, 111 S Ct 977.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 895.

No. 90-6089. Martin Blitstein, Petitioner v United States

498 US 1093, 112 L Ed 2d 1062, 111 S Ct 977.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 907 F2d 1142.

No. 90-6096. Jerry Lewis Pearson, Petitioner v United States

498 US 1093, 112 L Ed 2d 1062, 111 S Ct 977.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 910 F2d 221.

No. 90-6097. Alonzo Gibson-Bey, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978.

February 19, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-6114. Alan Thorpe, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 912 F2d 159.

No. 90-6120. Andrew Maurice Maryland, Petitioner v Larry W. Huffman, Warden, et al.

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978, reh den (US) 113 L Ed 2d 671, 111 S Ct 1610.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 723.

No. 90-6124. Avery Nathaniel Brice, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6126. Wilmer Sample, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 245.

No. 90-6135. James Cattalo, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 978.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1477.

No. 90-6138. Alp Martin, Petitioner v United States

498 US 1093, 112 L Ed 2d 1063, 111 S Ct 979.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 728.

No. 90-6144. Francisco Javier Guizar, Petitioner v Edward R. Meyers, Warden, et al.

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 979.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1488.

No. 90-6148. Gary Wayne Golden, Petitioner v United States

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 979.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6150. Marilyn J. Fair, et vir, Petitioners v Roger Steele, et al.

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 979.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6174. Jerome Brown, Petitioner v Secretary of Health and Human Services

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 979.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 905 F2d 632.

No. 90-6184. Mark Preston Harrison, Petitioner v Arizona

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 979.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Arizona, Division One, denied.

Same case below, 164 Ariz 316, 792 P2d 779.

No. 90-6187. Eddie Bishop Jones, Petitioner v United States

498 US 1093, 112 L Ed 2d 1064, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 725.

No. 90-6191. Tanell Rashaad Curry, Petitioner v United States

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 911 F2d 72.

No. 90-6192. Harold G. Miller, Petitioner v United States

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 910 F2d 1321.

No. 90-6213. Fred Whitaker, Petitioner v Wells Fargo National Association, et al.

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

No. 90-6222. David Grove, Petitioner v United States

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-6224. Jairo Arcilla-Gomez, Petitioner v United States

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 980.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 720.

No. 90-6225. Heinz G. Dall, Petitioner v United States

498 US 1094, 112 L Ed 2d 1065, 111 S Ct 981.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 918 F2d 52.

No. 90-6229. James L. Martin, Petitioner v Supreme Court of Delaware

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 981, reh den (US) 113 L Ed 2d 484, 111 S Ct 1433.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Delaware denied.

Same case below, 583 A2d 660.

No. 90-6250. Ronald E. Peters, Petitioner v United States

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 981.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 912 F2d 208.

No. 90-6261. George Sassower, Petitioner v Charles Brieant, et al.

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 981.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6263. George Sassower, Petitioner v United States Court of Appeals for the District of Columbia Circuit

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 981.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

No. 90-6270. Donovan Juan Michaels, Petitioner v United States

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 981.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 911 F2d 131.

No. 90-6275. Fabio Jose Palacio, Petitioner v United States

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 720.

No. 90-6290. Cecil Alan Jones, Petitioner v United States

498 US 1094, 112 L Ed 2d 1066, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 909 F2d 1480.

No. 90-6294. William Johnston, Petitioner v Larry Mizell, Warden, et al.

498 US 1094, 112 L Ed 2d 1067, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 912 F2d 172.

No. 90-6311. Kevin Wesley Doggett, Petitioner v United States

498 US 1094, 112 L Ed 2d 1067, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 464.

No. 90-6324. Johnny Larry Horton, Petitioner v United States

498 US 1094, 112 L Ed 2d 1067, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 269.

No. 90-6329. Charles David Keller, Petitioner v United States

498 US 1095, 112 L Ed 2d 1067, 111 S Ct 982.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 1058.

No. 90-6332. Bill Oxendine and Ruby Oxendine, Petitioners v Commissioner of Internal Revenue

498 US 1095, 112 L Ed 2d 1067, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6334. Malcolm Alexander, Petitioner v United States

498 US 1095, 112 L Ed 2d 1067, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 907 F2d 269.

No. 90-6340. Terry Gene Barber, Petitioner v United States

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 258.

No. 90-6345. Brian T. Ellzey, Petitioner v United States

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6370. Eddie Lucio Garcia, Petitioner v United States

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 252.

No. 90-6372. Michael Neel Gleason, Petitioner v Dean Huckabee, Judge, Harris County, Texas, District Court, et al.

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 983.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 901 F2d 1112.

No. 90-6375. Ronald Hale, Petitioner v United States

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 258.

No. 90-6392. Eugene Van Aernam, Petitioner v Ron Burkhart, Warden

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-6397. Kevlin D'Mar Bradley, Petitioner v United States

498 US 1095, 112 L Ed 2d 1068, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 912 F2d 466.

No. 90-6399. Adrian Niculescu, Petitioner v Chrysler Motors Corporation

498 US 1095, 112 L Ed 2d 1069, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6400. Mr. Four Hundred, Petitioner v D. J. Howe, et al.

498 US 1095, 112 L Ed 2d 1069, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-6401. Paul Green, Petitioner v Illinois

498 US 1095, 112 L Ed 2d 1069, 111 S Ct 984.

February 19, 1991. Petition for writ of certiorari to the Appellate Court of Illinois, Fourth District, denied.

Same case below, 199 Ill App 3d 927, 145 Ill Dec 960, 557 NE2d 939.

No. 90-6403. Richard O. Burgess, Petitioner v Washington County, et al.

498 US 1095, 112 L Ed 2d 1069, 111 S Ct 985.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 261.

No. 90-6408. Wayne R. Anderson, Petitioner v Supreme Court of the State of Kansas

498 US 1095, 112 L Ed 2d 1069, 111 S Ct 985.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Kansas denied.

Same case below, 247 Kan 208, 795 P2d 64.

No. 90-6410. Daniel Whisenant, Petitioner v Florida

498 US 1096, 112 L Ed 2d 1069, 111 S Ct 985.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 570 So 2d 1307.

No. 90-6411. Michael Sindram, Petitioner v J. James McKenna, et al.

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 985, reh den (US) 113 L Ed 2d 461, 111 S Ct 1406.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 917 F2d 558.

No. 90-6415. Scott William Himmelein, Petitioner v Michigan

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 985.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

Same case below, 177 Mich App 365, 442 NW2d 667.

No. 90-6416. Herman Lynch, Petitioner v Mario Cuomo, et al.

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 985.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6418. Ignacio Sanchez Lopez, Petitioner v California

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, denied.

No. 90-6422. Ralph Lepiscopo, Petitioner v Sharon K. Knapp, et al.

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6424. Russell L. Obremski, Petitioner v Manfred Maass, Superintendent, Oregon State Penitentiary

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 915 F2d 418.

No. 90-6428. Gregory Powell, Petitioner v David Owens, Commissioner, Pennsylvania Department of Corrections, et al.

498 US 1096, 112 L Ed 2d 1070, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 136.

No. 90-6430. Jeanne Wages, Petitioner v Internal Revenue Service, et al.

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 915 F2d 1230.

No. 90-6435. Robert Young, Petitioner v John Wireman, Warden

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 986.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1574.

No. 90-6440. Leroy A. Lovelace, Petitioner v Virginia

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Virginia denied.

No. 90-6441. Morris Martin, Petitioner v Robert Brown, et al.

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 889 F2d 1088.

No. 90-6443. Audley Dunkley, Petitioner v United States

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 522.

No. 90-6446. Robby Lee Andrews, Petitioner v United States

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1579.

No. 90-6449. William Cooper, Petitioner v Dale Stallman, et al.

498 US 1096, 112 L Ed 2d 1071, 111 S Ct 987.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6450. Starla Vaughn and Walter Vaughn, Petitioners v Charles H. Griffith

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 565 So 2d 75.

No. 90-6452. Jose Hincapie, Petitioner v United States

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 987.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 1561.

No. 90-6455. Michael Tyrone Parson, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 919 F2d 743.

No. 90-6462. Marilyn Kay James, Petitioner v Wyoming

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Wyoming denied.

No. 90-6466. James V. Carrao, Petitioner v Texas

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied.

Same case below, 800 SW2d 218.

No. 90-6467. Bradford Lowell Drake, Petitioner v City of Los Angeles, Personnel Department

498 US 1097, 112 L Ed 2d 1072, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6476. Michael A. Gideon, Petitioner v United States

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 696.

No. 90-6477. David Entel, Petitioner v United States

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 988.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 696.

No. 90-6478. Kevin Cruickshank, Petitioner v American Honda

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 989, reh den (US) 113 L Ed 2d 485, 111 S Ct 1433.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-6479. Thomas A. Berkelbaugh, Petitioner v George Petsock, et al.

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 989.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6481. Charles W. Wheat, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 989.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 912 F2d 1466.

No. 90-6482. Angel Calo, Petitioner v United States

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 989.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 696.

No. 90-6483. Gary Ellis, Petitioner v United States

498 US 1097, 112 L Ed 2d 1073, 111 S Ct 989.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 915 F2d 697.

No. 90-6484. John Willie Brown, Petitioner v United States

498 US 1097, 112 L Ed 2d 1074, 111 S Ct 989.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 721.

No. 90-6485. Moses Green, Petitioner v John P. Whitley, Warden, et al.

498 US 1097, 112 L Ed 2d 1074, 111 S Ct 990.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 561.

No. 90-6489. Lloyd Michael Reid, Petitioner v United States

498 US 1097, 112 L Ed 2d 1074, 111 S Ct 990.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 911 F2d 1456.

No. 90-6492. Steven Leonard Theus, Petitioner v George Deeds, Warden, et al.

498 US 1098, 112 L Ed 2d 1074, 111 S Ct 990.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6493. Kenneth Wayne Hovland, Petitioner v James Blodgett, Superintendent, Washington State Penitentiary

498 US 1098, 112 L Ed 2d 1074, 111 S Ct 990.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 262.

No. 90-6494. Shay Liberman, Petitioner v Internal Revenue Service

498 US 1098, 112 L Ed 2d 1074, 111 S Ct 990.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 923 F2d 842.

No. 90-6495. Alvin Lee Harrison, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6496. Ronald Menard, Petitioner v United States

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 975.

No. 90-6498. Peter John Lovato, Petitioner v United States

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6500. Ronald Dean Murray, Petitioner v Jack Cowley, Warden, et al.

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 913 F2d 832.

No. 90-6502. Walter L. Demers, Petitioner v Rhode Island

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Rhode Island denied.

Same case below, 576 A2d 1221.

No. 90-6506. Sylvester Jones, Petitioner v George F. Gunn

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 991.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 287 App DC 378, 923 F2d 201.

No. 90-6507. Gary Wayne Hirsch, Petitioner v Joan G. Seitz

498 US 1098, 112 L Ed 2d 1075, 111 S Ct 992.

February 19, 1991. Petition for

writ of certiorari to the Supreme Court of Oregon denied.

No. 90-6510. Stephan Albert Rendick, Petitioner v Pennsylvania

498 US 1098, 112 L Ed 2d 1076, 111 S Ct 992.

February 19, 1991. Petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, denied.

Same case below, 398 Pa Super 648, 573 A2d 623.

No. 90-6512. Debro Siddiq Abdul-Akbar, Petitioner v Anthony A. Figliola, Jr.

498 US 1098, 112 L Ed 2d 1076, 111 S Ct 992.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Delaware denied.

Same case below, 584 A2d 1228.

No. 90-6514. Thomas Robinson, Petitioner v Donald Hartzell, et al.

498 US 1098, 112 L Ed 2d 1076, 111 S Ct 992.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 55 Ohio St 3d 715, 563 NE2d 725.

No. 90-6515. Warren Reginald Stevenson, Petitioner v Maryland

498 US 1098, 112 L Ed 2d 1076, 111 S Ct 992, reh den (US) 113 L Ed 2d 672, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the Court of Special Appeals of Maryland denied.

Same case below, 83 Md App 716.

No. 90-6516. Eligio Castro, Petitioner v New York City Board of Education, et al.

498 US 1099, 112 L Ed 2d 1076, 111 S Ct 992.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 923 F2d 844.

No. 90-6518. Harry A. Wolfenbarger, Petitioner v Kansas Department of Social and Rehabilitation Services

498 US 1099, 112 L Ed 2d 1076, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Kansas denied.

No. 90-6519. Brett Delain Sorenson, Petitioner v United States

498 US 1099, 112 L Ed 2d 1076, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 173.

No. 90-6520. Joseph L. Rainer, Petitioner v Department of Corrections

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 914 F2d 1067.

No. 90-6521. Clarence Edward Reed, Petitioner v United States

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6523. Lester Jay Baker, Petitioner v United States

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 914 F2d 208.

No. 90-6525. Walter Michael Pasco, Petitioner v Terry L. Morris, Warden

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 993.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 1494.

No. 90-6526. Jerry Walker, Petitioner v United States

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 259.

No. 90-6527. Reginald Hayes, Petitioner v Nevada

498 US 1099, 112 L Ed 2d 1077, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Nevada denied.

Same case below, 106 Nev 1024, 835 P2d 41.

No. 90-6528. Ignacio A. Navarro, Petitioner v Steve Hargett, Warden, et al.

498 US 1099, 112 L Ed 2d 1078, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6529. Leroy Johnson, Petitioner v United States

498 US 1099, 112 L Ed 2d 1078, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 907 F2d 152.

No. 90-6535. Gary Lee McColpin, Petitioner v Steven J. Davies, et al.

498 US 1099, 112 L Ed 2d 1078, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6536. Robert Jasinski, aka William J. Edgar, Petitioner v United States

498 US 1099, 112 L Ed 2d 1078, 111 S Ct 994.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 965.

No. 90-6543. Charles Edward Wilson, Petitioner v Steve Puckett, Superintendent, Mississippi State Penitentiary at Parchman, et al.

498 US 1099, 112 L Ed 2d 1078, 111 S Ct 995.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6544. Elmer Leon Peterson, Petitioner v North Carolina Parole Commission, et al.

498 US 1100, 112 L Ed 2d 1078, 111 S Ct 995, reh den (US) 113 L Ed 2d 672, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 917 F2d 22.

No. 90-6545. Apolinario Vigil, Petitioner v Robert Tansy, Warden

498 US 1100, 112 L Ed 2d 1078, 111 S Ct 995.

February 19, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the Tenth Circuit denied.

Same case below, 917 F2d 1277.

No. 90-6546. James Shaun Ashurst, Petitioner v William H. Dallman, Superintendent, Lebanon Correctional Institution

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 995.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 255.

No. 90-6547. Jesse Wallace, Petitioner v United States

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 995.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6548. Roger Irelan and Lora Irelan, Petitioners v Indiana

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 995.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Indiana, Fourth District, denied.

Same case below, 533 NE2d 630.

No. 90-6550. Freddie B. Herron, Jr., Petitioner v Florida, et al.

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

No. 90-6551. Arnold Naftel, Petitioner v Arizona, et al.

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 328.

No. 90-6554. Walter Smith, Petitioner v New York

498 US 1100, 112 L Ed 2d 1079, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Second Judicial Department, denied.

Same case below, 161 App Div 2d 817, 556 NYS2d 378.

No. 90-6555. Thomas Robinson, Petitioner v Stark County Metropolitan Housing Authority

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Stark County, denied.

No. 90-6558. Kevin Eliga, Petitioner v United States

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 914 F2d 1404.

No. 90-6560. Jesse E. Cochran, Petitioner v Jack Cowley, Warden, et al.

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 996.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6561. Harry Bout, Petitioner v State Bar of Michigan Attorney Grievance Commission and Eugene La Belle

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6564. Raymond Garcia, Petitioner v United States

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 923 F2d 842.

No. 90-6565. Robert Lee McDile, Petitioner v United States

498 US 1100, 112 L Ed 2d 1080, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 914 F2d 1059.

No. 90-6566. John Edward Medved, Petitioner v United States

498 US 1101, 112 L Ed 2d 1080, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 905 F2d 935.

No. 90-6567. Leon Dario Machado-Puerta, Petitioner v United States

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 721.

No. 90-6568. Winston Simpkins, Petitioner v United States

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 997.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 914 F2d 1054.

No. 90-6569. Robert W. Tidwell, Petitioner v United States

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 998.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 1305.

No. 90-6570. John E. Reneer, et al., Petitioners v Frank Wall, et al.

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 998.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 916 F2d 713.

No. 90-6571. John Robert Demos, Jr., Petitioner v United States District Court for the Eastern District of Washington

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 998.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6572. Thomas J. Conboy, Petitioner v Robert W. Baird & Company, Incorporated

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 998.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 247.

No. 90-6573. Wilbert Monroe Gurley, Petitioner v United States

498 US 1101, 112 L Ed 2d 1081, 111 S Ct 998.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 918 F2d 179.

No. 90-6574. Luis Alberto Gutierrez-Jaramillo, Petitioner v United States

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 998.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 137.

No. 90-6576. Donald R. Sceifers, Petitioner v Sheila K. Zwickey, et al.

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Indiana, First District, denied.

No. 90-6577. Earnest Smith, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 882 F2d 331.

No. 90-6579. Charles Ead, Petitioner v Jorge Denapoli

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Massachusetts denied.

Same case below, 29 Mass App 1103, 557 NE2d 776.

No. 90-6580. Rudi Bernard Smith, Petitioner v United States

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 565.

No. 90-6585. Fredda Sue Mowbray, Petitioner v Texas

498 US 1101, 112 L Ed 2d 1082, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Texas, Thirteenth District, denied.

Same case below, 788 SW2d 658.

No. 90-6587. Douglas Rubins, Petitioner v Warren T. Diesslin, Warden

498 US 1101, 112 L Ed 2d 1083, 111 S Ct 999.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6589. James Asbury, Petitioner v Wisconsin

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District II, denied.

Same case below, 157 Wis 2d 506, 460 NW2d 447.

No. 90-6590. Neil E. Beachem, Petitioner v Virginia

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Virginia denied.

No. 90-6591. Frederick E. Melvin, Petitioner v Florida, et al.

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

No. 90-6593. Norman Cowart, Petitioner v Texas

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000, reh den (US) 113 L Ed 2d 672, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Texas denied.

No. 90-6594. John M. Ferenc, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections, et al.

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

No. 90-6596. Lawrence Smith, Petitioner v Tennessee

498 US 1102, 112 L Ed 2d 1083, 111 S Ct 1000.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6597. David Badley, Petitioner v Charles Scully, Superintendent, Greenhaven Correctional Facility

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 708.

No. 90-6598. Patrick H. Keene, Petitioner v United States

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1164.

No. 90-6599. John A. Harrison, Petitioner v Richard L. Dugger, Secretary, Florida Department of Corrections

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 916 F2d 721.

No. 90-6600. John Williams, Petitioner v United States

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 917 F2d 112.

No. 90-6601. Regina Starr, Petitioner v District of Columbia Department of Employment Services (Workers Compensation)

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001, reh den (US) 114 L Ed 2d 131, 111 S Ct 2048.

February 19, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-6602. Timothy Green and Mary Ann Gillespie, Petitioners v United States

498 US 1102, 112 L Ed 2d 1084, 111 S Ct 1001.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 25.

No. 90-6604. Johnny F. Mitchell, Petitioner v James N. Rollins, Warden

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

498 US 1102, 112 L Ed 2d 1085, 111 S Ct 1002.

Same case below, 914 F2d 248.

No. 90-6605. Arnold D. Mackey, Petitioner v Michigan, et al.

498 US 1102, 112 L Ed 2d 1085, 111 S Ct 1002, reh den (US) 113 L Ed 2d 672, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1572.

No. 90-6606. Fernando Delgado, Petitioner v United States

498 US 1102, 112 L Ed 2d 1085, 111 S Ct 1002.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 911 F2d 728.

No. 90-6611. Thomas Michael Sorensen, Petitioner v United States

498 US 1103, 112 L Ed 2d 1085, 111 S Ct 1002.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 915 F2d 599.

No. 90-6612. Patrick Ray Warner, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1103, 112 L Ed 2d 1085, 111 S Ct 1002.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6617. Dale M. Preston, aka Jami Mansour Shabazz, Petitioner v United States

498 US 1103, 112 L Ed 2d 1085, 111 S Ct 1002.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 910 F2d 81.

No. 90-6618. William C. Bennett, aka John A. Richardson, Petitioner v Garrison A. Parker, Warden, et al.

498 US 1103, 112 L Ed 2d 1085, 111 S Ct 1003.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 898 F2d 1530.

No. 90-6619. Pedro Aguilar, Petitioner v United States

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1003.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 264.

No. 90-6621. Charles Edward Currie, Petitioner v United States

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1003.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 916 F2d 710.

No. 90-6622. Roland A. Gomes, Petitioner v United States

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1003.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1492.

No. 90-6623. James Danforth (Formerly Effects Associates, Inc.), Petitioner v Larry Cohen, et al.

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1003.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 555.

No. 90-6625. Michelle Ayers, et al., Petitioners v Philadelphia Housing Authority, et al.

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1003.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 1184.

No. 90-6626. Randall Gene Cunningham, Petitioner v United States

498 US 1103, 112 L Ed 2d 1086, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 361.

No. 90-6629. Jessie Lee Payton, Petitioner v Jack Cowley, Warden, et al.

498 US 1103, 112 L Ed 2d 1087, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6630. James Calvin Weddle, Petitioner v Richard Singleton, Warden, et al.

498 US 1103, 112 L Ed 2d 1087, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 250.

No. 90-6631. James Sherman Walker, Petitioner v United States

498 US 1103, 112 L Ed 2d 1087, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1365.

No. 90-6632. Bobby Moore, Jr., Petitioner v John Nagle, Warden, et al.

498 US 1103, 112 L Ed 2d 1087, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 917 F2d 568.

No. 90-6635. Gary Wayne Johnson, Petitioner v United States

498 US 1103, 112 L Ed 2d 1087, 111 S Ct 1004.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 911 F2d 403.

No. 90-6636. John Bert Fisher, Petitioner v United States

498 US 1104, 112 L Ed 2d 1087, 111 S Ct 1005.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1492.

No. 90-6637. Arthur Maez, Petitioner v United States

498 US 1104, 112 L Ed 2d 1087, 111 S Ct 1005.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 915 F2d 1466.

No. 90-6638. Bernard Edward Analla, Petitioner v United States

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1005.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6641. William Wingerter, Petitioner v Frank C. Blackburn, Warden, et al.

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1005.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 560.

No. 90-6642. Manuel Parrado, Petitioner v United States

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1005.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 1567.

No. 90-6643. Eric Unger, Petitioner v United States

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1005.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 915 F2d 759.

No. 90-6644. John Webster Flanagan, Petitioner v United States

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6645. Jose Gilberto Drummond, Petitioner v United States

498 US 1104, 112 L Ed 2d 1088, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 910 F2d 284.

No. 90-6646. Calvin Lyniol Robinson, Petitioner v United States

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 913 F2d 712.

No. 90-6648. Daries Sherrills, Petitioner v John Corrigan, et al.

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 918 F2d 958.

No. 90-6649. Carl Rucker, Petitioner v Wisconsin, et al.

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District I, denied.

Same case below, 156 Wis 2d 824, 458 NW2d 390.

No. 90-6651. Julian Scott Esparza, Petitioner v George Casillas, et al.

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 919 F2d 737.

No. 90-6653. Ronald Thomas, Petitioner v United States

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1006.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1493.

No. 90-6654. Abraham Friedman, Petitioner v New York City Department of Housing and Development Administration and New York City

498 US 1104, 112 L Ed 2d 1089, 111 S Ct 1007.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 912 F2d 462.

No. 90-6659. Erwin Donell Bullock, Petitioner v Edward Murray, Director, Virginia Department of Corrections, et al.

498 US 1104, 112 L Ed 2d 1090, 111 S Ct 1007.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 1490.

No. 90-6660. Ben W. Allustiarte and Linda M. Allustiarte, Petitioners v W. Austin Cooper

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1007.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 911 F2d 737.

No. 90-6662. Enrique Emilio Ramirez, Petitioner v United States

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1007.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 915 F2d 693.

No. 90-6665. Ricardo Perez, Petitioner v United States

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1007.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 560.

No. 90-6666. Marvin S. Wells, Petitioner v United States

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 919 F2d 142.

No. 90-6667. Todd Stephens, Petitioner v United States

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 564.

No. 90-6670. Robert Scott, Petitioner v United States

498 US 1105, 112 L Ed 2d 1090, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 567.

No. 90-6671. Ruben Velasquez Suarez, Petitioner v United States

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 908 F2d 978.

No. 90-6673. Alvin Richard Jones, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 921 F2d 275.

No. 90-6675. Steven F. Madeoy and Jakey Madeoy, Petitioners v United States

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1008.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 286 App DC 132, 912 F2d 1486.

No. 90-6676. Richard Neiman, Petitioner v United States

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1009.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 917 F2d 568.

No. 90-6677. Betty Aronow, Petitioner v Edward Lacroix and Joseph Schumb

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1009.

February 19, 1991. Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

Same case below, 219 Cal App 3d 1039, 268 Cal Rptr 866.

No. 90-6678. Moises Reinja Naveira, Petitioner v United States

498 US 1105, 112 L Ed 2d 1091, 111 S Ct 1009.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-6679. Jonathan Albert Minks, Petitioner v Minnesota

498 US 1105, 112 L Ed 2d 1092, 111 S Ct 1009.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Minnesota denied.

No. 90-6684. D'Angelo Jones, Petitioner v Pennsylvania

498 US 1105, 112 L Ed 2d 1092, 111 S Ct 1009.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, denied.

Same case below, 525 Pa 323, 580 A2d 308.

No. 90-6686. George Hawkins, Petitioner v Columbia First Federal Savings and Loan Association

498 US 1105, 112 L Ed 2d 1092, 111 S Ct 1009, reh den (US) 113 L Ed 2d 673, 111 S Ct 1612.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 912 F2d 463.

No. 90-6687. Johnnie Corbett Meadows, Petitioner v Melanie Meadows

498 US 1106, 112 L Ed 2d 1092, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Belmont County, denied.

No. 90-6699. Harry Wolfenbarger, Petitioner v Donna Wolfenbarger

498 US 1106, 112 L Ed 2d 1092, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Kansas denied.

No. 90-6700. Herman Via, Petitioner v United States

498 US 1106, 112 L Ed 2d 1092, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 911 F2d 726.

No. 90-6707. Keith Allan Castle, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 918 F2d 179.

No. 90-6708. Michael Alfano, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 137.

No. 90-6709. Leo Eugene Jackson, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1010.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1573.

No. 90-6716. Abelee Brunson, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1011.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 392.

No. 90-6718. Miguel A. Acosta, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1011.

February 19, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 32 MJ 37.

No. 90-6722. Deborah Byrne, Petitioner v United States

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1011, reh den (US) 113 L Ed 2d 673, 111 S Ct 1612.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 903 F2d 566.

No. 90-6723. B. E. Sweatt, Petitioner v News World Communications, Inc.

498 US 1106, 112 L Ed 2d 1093, 111 S Ct 1011, reh den (US) 113 L Ed 2d 738, 111 S Ct 1643.

February 19, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 288 App DC 403, 927 F2d 1258.

No. 90-6725. Jerome Edward Buie, Petitioner v Maryland

498 US 1106, 112 L Ed 2d 1094, 111 S Ct 1011.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 320 Md 696, 580 A2d 167.

No. 90-6726. Carmen Young, Petitioner v United States

498 US 1106, 112 L Ed 2d 1094, 111 S Ct 1011.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 914 F2d 267.

No. 90-6730. Alvin Kennard, Petitioner v John E. Nagle, Warden, et al.

498 US 1106, 112 L Ed 2d 1094, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 917 F2d 569.

No. 90-6733. Samuel James Oakley, Sr., Petitioner v United States

498 US 1106, 112 L Ed 2d 1094, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-6734. Winston Paul, Petitioner v United States

498 US 1106, 112 L Ed 2d 1094, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6737. Robert Joe Murray, Petitioner v United States

498 US 1107, 112 L Ed 2d 1094, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 567.

No. 90-6740. Donald Hoffman, Petitioner v United States

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6741. Earl Joseph Hall, Petitioner v Pennsylvania

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1012.

February 19, 1991. Petition for writ of certiorari to the Superior Court of Pennsylvania, Harrisburg Office, denied.

Same case below, 382 Pa Super 6, 554 A2d 919.

No. 90-6743. Imam Shahid Muhammad, Petitioner v United States Bureau of Prisons

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1013.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6745. Charmaine Cespedes, Petitioner v United States

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1013.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 923 F2d 846.

No. 90-6750. Jose Diaz, Petitioner v United States

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1013.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 561.

No. 90-6751. Wallace Gant, Petitioner v United States

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1013.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 918 F2d 168.

No. 90-6752. Daniel Wright, Petitioner v Florida

498 US 1107, 112 L Ed 2d 1095, 111 S Ct 1013.

February 19, 1991. Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District, denied.

Same case below, 566 So 2d 1294.

No. 90-6760. Omar Rodriguez-Diaz, Petitioner v Florida Board of Bar Examiners

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

No. 90-6763. John Chica, Petitioner v United States

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 904 F2d 696.

No. 90-6764. Armando Benel, Petitioner v United States

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 911 F2d 741.

No. 90-6771. Gary Washington, Petitioner v United States

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6773. Desmond Bryan, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1576.

No. 90-6776. Leonard R. Friedman, Petitioner v Board of Registration in Medicine

498 US 1107, 112 L Ed 2d 1096, 111 S Ct 1014.

February 19, 1991. Petition for writ of certiorari to the Supreme Judicial Court of Massachusetts denied.

Same case below, 408 Mass 474, 561 NE2d 859.

No. 90-6779. Modesto Caba, Petitioner v United States

498 US 1107, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 918 F2d 1129.

No. 90-6784. Darryl Pierce, Petitioner v United States

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 138.

No. 90-6785. George Sassower, Petitioner v A. Franklin Mahoney, as Presiding Justice of the Appellate Division, Supreme Court of New York, Third Judicial Department, et al.

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 709.

No. 90-6787. Thomas Edward Fleming, Petitioner v United States

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 25.

No. 90-6804. Jose Luis Castillo and Manuel Castillo, Petitioners v United States

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6808. Fate McMiller, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1015.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 368.

No. 90-6820. Gerald Tharpe, Petitioner v United States

498 US 1108, 112 L Ed 2d 1097, 111 S Ct 1016.

February 19, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1573.

No. 90-6828. Charles Lee McKnight, Petitioner v United States

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1016.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6830. Jonell Holiday, Petitioner v United States

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1016.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6836. Kerry Thompson, Petitioner v United States

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1016.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 916 F2d 715.

No. 90-6841. Clifford Leon Moser, Petitioner v United States

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1016.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 25.

No. 90-6887. Virgil L. Evans, Petitioner v Henry N. Grayson, Warden

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1016.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 89-1973. Joslyn Manufacturing Company, Petitioner v T. L. James & Company, Inc.

No. 90-69. Powerline Supply Company, Inc., et al., Petitioners v T. L. James & Company, Inc.

498 US 1108, 112 L Ed 2d 1098, 111 S Ct 1017.

February 19, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Fifth

Circuit denied. Justice White would grant certiorari.

Same cases below, 893 F2d 80.

No. 90-737. David B. Zavadil, et ux., Petitioners v United States

498 US 1108, 112 L Ed 2d 1099, 111 S Ct 1017.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice White would grant certiorari.

Same case below, 908 F2d 334.

No. 90-781. 141st Street Corporation, by Mark Hersh, etc., Petitioner v United States

498 US 1109, 112 L Ed 2d 1099, 111 S Ct 1017.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied. Justice White would grant certiorari.

Same case below, 911 F2d 870.

No. 90-783. Village of Los Ranchos de Albuquerque, et al., Petitioners v R. H. Barnhart, Administrator, Federal Highway Administration, et al.

498 US 1109, 112 L Ed 2d 1099, 111 S Ct 1017.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied. Justice White would grant certiorari.

Same case below, 906 F2d 1477.

No. 90-993. CSX Transportation, Inc., Petitioner v Stephen Rastall, et al.

498 US 1109, 112 L Ed 2d 1099, 111 S Ct 1018.

February 19, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied. Justice White would grant certiorari.

Same case below, 574 A2d 271.

No. 90-704. Southern Bell Telephone and Telegraph Company, Petitioner v Steven W. Hamm, Consumer Advocate for South Carolina

498 US 1109, 112 L Ed 2d 1099, 111 S Ct 1018.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of South Carolina denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 302 SC 132, 394 SE2d 311.

No. 90-830. Bell Atlantic Corporation, Petitioner v United States, et al.

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1018.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied. Justice O'Connor took no part in the consideration or decision of this petition.

Same case below, 285 App DC 90, 907 F2d 160.

No. 90-867. Powell Duffryn Terminals, Inc., Petitioner v Public Interest Research Group of New Jersey, Inc., et al.

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1018.

February 19, 1991. The motion of American Iron and Steel Institute, et al. for leave to file a brief as amici curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 913 F2d 64.

No. 90-940. Emery Leathers, Petitioner v Nathan Miller

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1018.

February 19, 1991. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 913 F2d 1085.

No. 90-1015. J. O. Davis, Warden, Petitioner v Reginald Jones

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1019.

February 19, 1991. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 906 F2d 552.

No. 90-994. Lewis & Company, et al., Petitioners v Konstantin Thoeren, et al.

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1019.

February 19, 1991. The motion of respondents for attorney's fees and double costs is denied. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 913 F2d 1406.

No. 90-1039. Peer International Corporation, Petitioner v Pausa Records, Inc., et al.

498 US 1109, 112 L Ed 2d 1100, 111 S Ct 1019.

February 19, 1991. The motion of petitioner for leave to dispense with

Rule 29.1 listing of class members is granted. The motion of National Music Publishers' Association for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1332.

No. 90-1044. Sewell Plastics, Inc., Petitioner v Coca-Cola Company, dba Coca-Cola USA, et al.

498 US 1110, 112 L Ed 2d 1101, 111 S Ct 1019.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied. Justice Blackmun took no part in the consideration or decision of this petition.

Same case below, 912 F2d 463.

No. 90-1050. Michael J. Friedman, Petitioner v United States

498 US 1110, 112 L Ed 2d 1101, 111 S Ct 1020.

February 19, 1991. The motion of petitioner for an order directing the United States to respond to the petition for a writ of certiorari is denied. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

Same case below, 286 App DC 132, 912 F2d 1486.

No. 90-1101. William Leighton, Petitioner v Beatrice Companies, Inc., et al.

498 US 1110, 112 L Ed 2d 1101, 111 S Ct 1020.

February 19, 1991. The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the Supreme Court of Delaware denied.

No. 90-6713. Reginald Jells, Petitioner v Ohio

498 US 1111, 112 L Ed 2d 1101, 111 S Ct 1020.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 53 Ohio St 3d 22, 559 NE2d 464.

Justice Marshall, dissenting.

The question in this case is whether petitioner's waiver of his right to a jury trial was knowing and voluntary when there is no evidence that petitioner was aware that his waiver also applied to his right to be sentenced by a jury that could not impose death by less than a unanimous vote and without the trial judge's independent agreement that death was the proper sentence. Because I believe that petitioner could not be understood to have made a "knowing" decision without such critical information, I would grant the petition for certiorari.

I

The jury plays a vital role in Ohio's capital sentencing scheme. Under the Ohio Rules of Criminal Procedure, a felony defendant who does not waive the right to a jury trial is tried before a 12-person jury. See Ohio Rule Crim Proc 23(b) (1987). When the defendant is accused of a crime punishable by death, the same jury presides at both the guilt phase and the penalty phase. See State v Mapes, 19 Ohio St 3d 108, 116, 484 NE2d 140, 147 (1985), cert denied, 476 US 1178, 112 L Ed 2d 433, 111 S Ct 504 (1986); see also Ohio Rev Code Ann § 2929.03(C)(2)(b) (1987). Unless the jury unanimously finds beyond reasonable doubt that death is the proper sentence, the defendant must be sentenced to life imprisonment with parole eligibility after either 20 or 30 years imprisonment. See § 2929.03(D)(2); see also State v Jenkins, 15 Ohio St 3d 164, 200, 473 NE2d 264, 297 (1984), cert denied 472 US 1032, 87 L Ed 2d 643, 105 S Ct 3514 (1985). Significantly, even if the jury unanimously recommends the death penalty, the trial court also must independently find beyond reasonable doubt that death is the correct sentence before the defendant may be sentenced to death. See Ohio Rev Code Ann § 2929.03(D)(2)-(3) (1987); see also State v Jenkins, supra, at 200-201, 473 NE2d, at 297.

Petitioner was convicted of murder and sentenced to death in an Ohio state court. Because petitioner waived his right to a jury trial, a three-judge panel determined both his guilt and his sentence.[1] The form on which petitioner executed his waiver mirrored the language of Ohio Rev Code Ann § 2945.05 (1987):

> " 'I, REGINALD JELLS, the defendant in the above cause, hereby voluntarily waive and relinquish my right to a trial by jury, and elect to be tried by three judges of the court in which said cause may be pending. I fully understand that under the laws of this State, I have a constitutional right to a trial by jury.' " 53 Ohio St 3d 22, 25, 559 NE2d 464, 468 (1990).

Petitioner signed the statement, as did his two witnessing attorneys. Ibid. The trial court also conducted a hearing to determine whether petitioner signed the form voluntarily:

" 'THE COURT: Reginald, is that your signature?

" 'THE DEFENDANT: Yes, it is, sir.

" 'THE COURT: You did this of your own free will?

" 'THE DEFENDANT: Yes, I did.

" 'THE COURT: Nobody forced you to do this?

" 'THE DEFENDANT: No, sir.

" 'THE COURT: All right.

> " 'MR. HUBBARD [defense counsel]: I have witnessed his signature, your Honor.
>
> " 'THE COURT: This will be made part of the record.' " Ibid.

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[1] Under Ohio law, a defendant who is accused of a crime punishable by death and who waives his right to a jury trial is tried and sentenced by a three-judge panel. See Ohio Rev Code Ann §§ 2929.03(C)(2)(a), 2945.06 (1987). Ohio's capital sentencing statute does not contain any provision whereby a capital defendant can waive his right to a jury trial but nonetheless elect to be sentenced by a jury.

Petitioner maintains that his waiver was not constitutionally sufficient because at no point did the trial judge advise him that by waiving his jury trial right he also waived jury sentencing. The Ohio Supreme Court did not address the sufficiency of petitioner's waiver under federal constitutional standards even though it acknowledged that petitioner had claimed his waiver was "constitutionally insufficient." See id., at 24, 559 NE2d, at 467. The court did hold, however, that under Ohio law the trial court is not required to determine whether a defendant "is fully apprised of the right to a jury trial," id., at 25-26, 559 NE2d at 468, and that Ohio law is "satisfied by a written waiver, signed by the defendant, filed with the court, and made in open court, after arraignment and opportunity to consult with counsel," id., at 26, 559 NE2d at 468. For these reasons, the court determined that the trial court's failure specifically to advise petitioner of the effect of his waiver on sentencing gave rise to "no error, plain or otherwise." Ibid.[2]

I cannot accept the Ohio court's conclusion. The Sixth Amendment guarantees a criminal defendant the right to a trial by jury. While this right is subject to waiver, "we 'do not presume acquiescence in the loss of fundamental rights,'" Johnson v Zerbst, 304 US 458, 464, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357 (1938) (citation omitted), and courts are therefore obliged to establish that any such waivers are made knowingly and voluntarily, id., at 464-465, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357. It is generally accepted that waivers of certain constitutional rights—such as a waiver through a guilty plea of the right to trial or a waiver of the right to counsel—should be made in open court. See e.g., Brady v United States, 397 US 742, 748, 25 L Ed 2d 747, 90 S Ct 1463 (1970) (right to trial); Johnson v Zerbst, supra, at 465, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357 (right to counsel). Because these rights are critical in protecting a defendant's life and liberty, trial courts must apprise the defendant of the *"relevant circumstances and likely consequences,"* Brady v United States, supra, at 748, 25 L Ed 2d 747, 90 S Ct 1463 (emphasis added), to determine whether the defendant's waiver is made freely and intelligently.

Some courts, believing that the Constitution does not compel an inquiry by the trial judge when a defendant purports to waive his right to a jury trial, have nevertheless recognized that "trial courts *should* conduct colloquies with the defendant . . . [and] make sure that [the] defendant knows what the right guarantees before waiving it." See United States v Cochran, 770 F2d 850, 852 (CA9 1985) (citing cases). In my view, when a *capital* defendant's waiver of his jury trial right includes a waiver of his right to jury sentencing, this type of a searching inquiry by the trial judge into the knowing and voluntary nature of the waiver is not only sound practice but is constitutionally compelled.

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[2] Because the Ohio Supreme Court did not "actually . . . rel[y]" on a procedural bar for disposing of petitioner's federal claim, see Caldwell v Mississippi, 472 US 320, 327, 86 L Ed 2d 231, 105 S Ct 2633 (1985), our jurisdiction is secure. Respondent does not contend that petitioner's federal claim is not properly before us.

The decision to waive the right to jury sentencing may deprive a capital defendant of potentially life-saving advantages. As we have recognized, the jury operates as an essential bulwark to "prevent oppression by the Government." Duncan v Louisiana, 391 US 145, 155, 20 L Ed 2d 491, 88 S Ct 1444 (1968). " '[O]ne of the most important functions any jury can perform in making . . . a selection [between life imprisonment and death for a defendant convicted in a capital case] is to maintain a link between contemporary community values and the penal system.' " Gregg v Georgia, 428 US 153, 181, 49 L Ed 2d 859, 96 S Ct 2909 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.), quoting Witherspoon v Illinois, 391 US 510, 519, n 15, 20 L Ed 2d 776, 88 S Ct 1770 (1968). Indeed, it has been argued that juries are less inclined to sentence a defendant to death than are judges. See Spaziano v Florida, 468 US 447, 488, n 34, 82 L Ed 2d 340, 104 S Ct 3154 (1984) (Stevens, J., concurring in part and dissenting in part), citing H. Zeisel, Some Data on Juror Attitudes Towards Capital Punishment 37-50 (1968).

Under Ohio law, the consequences of a capital defendant's waiver are particularly far reaching. As noted, had petitioner not waived his jury trial right in favor of the three-judge panel, his life would have been spared unless all 12 jurors could have agreed that death was the proper sentence, and unless the trial judge then independently determined that the jury reached the correct result. The practical effect of petitioner's waiver, then, was to forfeit the right to have 10 additional decisionmakers review his punishment—each of whom would have had the power to veto his death sentence and some of whom might well have been less likely to vote for the death sentence than the three judges on the panel.

Given the consequences of petitioner's decision, the trial court's inquiry, which focused only upon whether petitioner signed the boilerplate waiver form voluntarily, was constitutionally inadequate. The court did not determine whether petitioner fully understood his entitlement to a jury trial—that is, whether he had signed the waiver "with sufficient awareness of the relevant circumstances and likely consequences" of his act. See Brady v United States, supra, at 748, 25 L Ed 2d 747, 90 S Ct 1463. Nor did the waiver itself cure this defect, since it did no more than inform petitioner of his " 'constitutional right to a trial by jury.' " 53 Ohio St 3d, at 25, 559 NE2d, at 468. It did not explain to him that he also was waiving his right to be sentenced by a jury or that, in the absence of a waiver, he could be sentenced to death only upon the jury's unanimous vote and the independent approval of the trial judge.

It is no answer to assume, as did the Ohio Supreme Court, that petitioner's "opportunity to consult with counsel," id., at 26, 559 NE2d, at 468, was an adequate substitute for a full inquiry in open court. The Ohio Supreme Court made no effort to ascertain whether counsel had even conferred with petitioner at all, or, if they did confer, what petitioner was told. As I have noted before, courts cannot confidently assume that defense counsel have apprised a capital defendant of the considerations relevant to a decision to waive his right to a jury.

> "A presumption that defendant's counsel will always inform him of the relevant factors in a decision to waive constitutional rights amounts to a rule that all waivers made after the defendant has retained counsel *necessarily* will be considered voluntary, knowing, and intelligent. Such a rule offends common sense and impermissibly strips a defendant of constitutional protections long recognized by this Court." Robertson v California, 493 US 879, 881, 107 L Ed 2d 169, 110 S Ct 216 (1989) (Marshall, J., dissenting from denial of certiorari).

Such casual presumptions not only have no place in matters of life and death but also contravene "[t]he requirement that *the prosecution* spread on the record the prerequisites of a valid waiver." Boykin v Alabama, 395 US 238, 242, 23 L Ed 2d 274, 89 S Ct 1709 (1969) (emphasis added). When a defendant purports to waive a fundamental constitutional right, "it is the State that has the burden of establishing a valid waiver." Michigan v Jackson, 475 US 625, 633, 89 L Ed 2d 631, 106 S Ct 1404 (1986). Because the State clearly has not met that burden in this case, I would grant the petition for certiorari.

II

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, supra, at 231, 49 L Ed 2d 859, 96 S Ct 2909 (Marshall, J., dissenting), I would grant the petition for certiorari and vacate petitioner's death sentence even if I did not believe this case otherwise merited review.

No. 90-6155. Fred Berre Douglas, Petitioner v California

498 US 1110, 112 L Ed 2d 1105, 111 S Ct 1023.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 468, 268 Cal Rptr 126, 788 P2d 640.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6266. Ryan Michael Marshall, Petitioner v California

498 US 1110, 112 L Ed 2d 1105, 111 S Ct 1023, reh den (US) 113 L Ed 2d 672, 111 S Ct 1610.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 907, 269 Cal Rptr 269, 790 P2d 676.

Justice Marshall, dissenting.

Adhering to my view that the

death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6434. George Porter, Petitioner v Florida

498 US 1110, 112 L Ed 2d 1106, 111 S Ct 1024.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Florida denied.

Same case below, 564 So 2d 1060.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6445. Charles Silagy, Petitioner v Howard Peters, III, Warden

498 US 1110, 112 L Ed 2d 1106, 111 S Ct 1024, reh den (US) 113 L Ed 2d 737, 111 S Ct 1642.

February 19, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 905 F2d 986.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6468. Tyrone Delano Gilliam, Petitioner v Maryland

498 US 1110, 112 L Ed 2d 1106, 111 S Ct 1024.

February 19, 1991. Petition for writ of certiorari to the Court of Appeals of Maryland denied.

Same case below, 320 Md 637, 579 A2d 744.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6480. Donald E. Reese, Petitioner v Missouri

498 US 1110, 112 L Ed 2d 1106, 111 S Ct 1025.

February 19, 1991. Petition for

writ of certiorari to the Supreme Court of Missouri denied.

Same case below, 795 SW2d 69.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6663. Richard Raymond Ramirez, Petitioner v California

498 US 1110, 112 L Ed 2d 1107, 111 S Ct 1025, reh den (US) 113 L Ed 2d 673, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of California denied.

Same case below, 50 Cal 3d 1158, 270 Cal Rptr 286, 791 P2d 965.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6668. Fred Lawrence Robinson, Petitioner v Arizona

498 US 1110, 112 L Ed 2d 1107, 111 S Ct 1025, reh den (US) 113 L Ed 2d 673, 111 S Ct 1611.

February 19, 1991. Petition for writ of certiorari to the Supreme Court of Arizona denied.

Same case below, 165 Ariz 51, 796 P2d 853.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6650. In Re Wilbert Proffitt, Petitioner

498 US 1080, 112 L Ed 2d 1107, 111 S Ct 1025.

February 19, 1991. The petition for writ of habeas corpus is denied.

No. 90-6681. In Re Michael Anthony Miller, Petitioner

498 US 1080, 112 L Ed 2d 1107, 111 S Ct 1026.

February 19, 1991. The petition for writ of habeas corpus is denied.

No. 90-6688. In Re George Sassower, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of habeas corpus is denied.

No. 90-6770. In Re Ronald Eugene Haygood, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of habeas corpus is denied.

No. 90-1135. In Re J. D. Amend, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of mandamus is denied.

No. 90-6413. In Re Robert Allen May, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of mandamus is denied.

No. 90-6592. In Re Audrey Miller, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of mandamus is denied.

No. 90-6702. In Re Brenda Shelton, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of mandamus is denied.

No. 90-6762. In Re Anthony L. Cozzetti, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1026.

February 19, 1991. The petition for writ of mandamus is denied.

No. 90-1054. In Re Jessie D. McDonald, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1027, reh den (US) 113 L Ed 2d 461, 111 S Ct 1406.

February 19, 1991. The petition for writ of mandamus and/or prohibition is denied.

No. 90-6658. In Re George Sassower, Petitioner

498 US 1081, 112 L Ed 2d 1108, 111 S Ct 1027.

February 19, 1991. The petition for writ of mandamus and/or prohibition is denied.

No. 90-6634. In Re William Kleinschmidt, Petitioner

498 US 1081, 112 L Ed 2d 1109, 111 S Ct 1027, reh den (US) 113 L Ed 2d 673, 111 S Ct 1611.

February 19, 1991. The petition for writ of prohibition is denied.

No. 89-1944. Ohio, Petitioner v Ediberto Huertas

498 US 1115, 112 L Ed 2d 1109, 111 S Ct 1027.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 336, 112 L Ed 2d 837, 111 S Ct 805.

No. 89-7787. Eleazar Villegas, Petitioner v California

498 US 1115, 112 L Ed 2d 1109, 111 S Ct 1027.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 966, 112 L Ed 2d 411, 111 S Ct 427.

No. 90-90. Martin J. Hughes, Petitioner v United States

498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1027.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 980, 112 L Ed 2d 520, 111 S Ct 508.

No. 90-484. Bill Taber, dba Tabers Grass Farm, Petitioner v James C. Pledger, Director, Arkansas Department of Finance and Administration

498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1027.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 967, 112 L Ed 2d 413, 111 S Ct 429.

No. 90-532. Ira Banks, Petitioner v Sterling Merchandise, Inc., et al.

498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 982, 112 L Ed 2d 524, 111 S Ct 512.

No. 90-5627. Donald Eugene Johnson and Robert William Jones, Petitioners v United States

498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1029, 112 L Ed 2d 675, 111 S Ct 683.

No. 90-5931. James Michael Harris, Petitioner v Bill Cato, et al.

498 US 1116, 112 L Ed 2d 1109, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1030, 112 L Ed 2d 678, 111 S Ct 687.

No. 90-5938. Michael Neel Gleason, Petitioner v Wells Stewart, Judge, Harris County, Texas District Court, et al.

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1001, 112 L Ed 2d 569, 111 S Ct 563.

No. 90-5941. Michael Dee Mattson, Petitioner v California

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1017, 112 L Ed 2d 595, 111 S Ct 591.

No. 90-5981. Robert L. Endres, Petitioner v Bill Armontrout, et al.

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1028.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1014, 112 L Ed 2d 590, 111 S Ct 586.

No. 90-5991. Omar G. Rodriguez-Diaz, Petitioner v Florida, et al.

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1015, 112 L Ed 2d 591, 111 S Ct 586.

No. 90-6020. Bernard Joseph Cassidy, Petitioner v Rose, Klein & Marias, et al.

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1002, 112 L Ed 2d 571, 111 S Ct 565.

No. 90-6031. Robert F. Sowell, Petitioner v Michael T. Maloney, Deputy Commissioner, Massachusetts Department of Correction

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1002, 112 L Ed 2d 572, 111 S Ct 565.

No. 90-6051. In Re Michael Sindram, Petitioner

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 177, 112 L Ed 2d 599, 111 S Ct 596.

No. 90-6054. Merle Kinder, Petitioner v Margaret Sandberg, et al.

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1002, 112 L Ed 2d 572, 111 S Ct 565.

No. 90-6116. James Canterbury, Petitioner v Edward Francis Kalisz

498 US 1116, 112 L Ed 2d 1110, 111 S Ct 1029.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1033, 112 L Ed 2d 683, 111 S Ct 693.

No. 90-6118. John F. Desmond, Petitioner v Department of Defense

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1070, 112 L Ed 2d 854, 111 S Ct 792.

No. 90-6171. Walter J. Moore, Petitioner v Kansas Department of Social and Rehabilitation Services, et al.

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1034, 112 L Ed 2d 687, 111 S Ct 697.

No. 90-6230. James L. Martin, Petitioner v Stephen W. Townsend, et al.

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1036, 112 L Ed 2d 691, 111 S Ct 701.

No. 90-6280. Johnny Mack Young, Petitioner v W. E. Johnson, Warden

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1051, 112 L Ed 2d 783, 111 S Ct 763.

No. 90-6313. Edward A. Ganey, Jr., Petitioner v Samuel A. Wilson, III, et al.

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1071, 112 L Ed 2d 855, 111 S Ct 793.

No. 89-6872. Brian Michael Daly, Petitioner v United States

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1030.

February 19, 1991. The motion for leave to file a petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this motion.

Former Decision, 496 US 927, 110 L Ed 2d 643, 110 S Ct 2622.

No. 90-543. Joseph R. Giannini, Petitioner v Manuel L. Real, Chief Judge, United States District Court for the Central District of California, et al.

498 US 1116, 112 L Ed 2d 1111, 111 S Ct 1031.

February 19, 1991. The motion of petitioner to defer consideration of the petition for rehearing is denied. The petition for rehearing is denied.

Former Decision, 498 US 1012, 112 L Ed 2d 585, 111 S Ct 580.

[498 US 505]

OKLAHOMA TAX COMMISSION, Petitioner

v

CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA

498 US 505, 112 L Ed 2d 1112, 111 S Ct 905

[No. 89-1322]

Argued January 7, 1991. Decided February 26, 1991.

Decision: Oklahoma held empowered to collect taxes on sales of cigarettes to nontribal members on land held in trust for Indian tribe by United States, but tribe held immune from suit.

SUMMARY

An Indian tribe owned and operated a convenience store in Oklahoma on land held in trust for the tribe by the Federal Government, and for many years the tribe sold cigarettes at that store without collecting the state's cigarette tax on such sales. The Oklahoma Tax Commission served a tribal leader with an assessment letter demanding payment of $2.7 million for taxes on cigarette sales. The tribe filed suit in the United States District Court for the Western District of Oklahoma to enjoin the assessment; the commission, in a counterclaim, asked the District Court to enforce its claim for $2.7 million and to enjoin the tribe from selling cigarettes in the future without collecting and remitting state taxes on those sales. The tribe unsuccessfully moved to dismiss the counterclaim on the ground that the tribe had not waived its sovereign immunity and thus could not be sued by the state. Following a trial, the District Court (1) ruled that (a) the tribe was immune from the commission's suit to collect past unpaid taxes directly from the tribe, because the commission had no authority to tax on-reservation cigarette sales to tribal members or to tax the tribe directly, but (b) the commission could require the tribe to collect taxes prospectively for on-reservation sales to nontribal members; and therefore (2) ordered the tribe to collect taxes on such sales and to comply with record-keeping requirements. The United States Court of Appeals for the Tenth Circuit reversed and remanded the case to the District Court, with instructions to dismiss the counterclaim and to enjoin the commission's assessment, as the Court of Appeals held that (1) the tribe enjoyed absolute sovereign immunity from

Briefs of Counsel, p 1291, infra.

suit and had not waived that immunity by filing an action for injunctive relief, and (2) because the store was located on land over which the tribe retained sovereign powers, the state had no authority to tax the store's transactions, regardless of whether they were with tribal members, in the absence of an independent jurisdictional grant of authority from Congress (888 F2d 1303).

On certiorari, the United States Supreme Court affirmed in part and reversed in part. In an opinion by Rehnquist, Ch. J., expressing the unanimous view of the court, it was held that (1) under the doctrine of tribal sovereign immunity, a state that has not asserted jurisdiction over Indian lands under Public Law 280 (18 USCS § 1162, 28 USCS § 1360) may collect taxes on sales of goods, which sales occur on land held in trust for a federally recognized Indian tribe, where such sales are made to nontribal members, although the state may not tax such sales where they are made to Indians; but (2) the tribe in the case at hand did not waive its sovereign immunity to suit merely by filing an action for injunctive relief; (3) the Supreme Court would not modify the principle of tribal sovereign immunity so as to permit the state to maintain its tax enforcement action; and (4) land held by the Federal Government in trust for the benefit of the tribe qualified as a reservation for tribal immunity purposes.

Stevens, J., concurred, expressing the view that (1) the Supreme Court correctly held that the state may collect taxes on tribal sales to non-Indians; (2) the court's holding in effect rejected the argument that the tribe was completely immune from legal process; and (3) the court, by addressing the substance of the state's claim for prospective injunctive relief against the tribe, recognized that a tribe's sovereign immunity from actions seeking money damages does not necessarily extend to actions seeking equitable relief.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Courts § 775; Indians § 32; Sales and Use Taxes §§ 4, 5 — state tax — collection — tribal immunity — sales to tribal members and nonmembers — adherence to precedent

1a, 1b. Under the doctrine of tribal sovereign immunity, a state that has not asserted jurisdiction over Indian lands under Public Law 280 (18 USCS § 1162, 28 USCS § 1360) may collect taxes on sales of

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41 Am Jur 2d, Indians §§ 6, 7, 63; 68 Am Jur 2d, Sales and Use Taxes §§ 25, 26, 42; 71 Am Jur 2d, State and Local Taxation § 235

19 Federal Procedure, L Ed, Indians and Indian Affairs §§ 46:1022, 46:1023

18 USCS § 1162, 28 USCS § 1360

L Ed Digest, Indians § 32; Sales and Use Taxes §§ 4, 5

L Ed Index, Indians; Privileges and Immunities; Sales and Use Taxes; States

Index to Annotations, Governmental Immunity or Privilege; Indians; Sales and Use Taxes; States

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

State tax as inconsistent with federal law so as to violate supremacy clause (Art VI, cl 2) of Federal Constitution—Supreme Court cases. 93 L Ed 2d 1056.

Validity, under Federal Constitution, statutes, and treaties, of state or local tax as affected by its imposition on Indians, their property or activities, or in connection with an Indian reservation—Supreme Court cases. 73 L Ed 2d 1506.

State sales or use tax as violating immunity of United States—Supreme Court cases. 44 L Ed 2d 719.

What issues will the Supreme Court consider, though not, or not properly, raised by the parties. 42 L Ed 2d 946.

Validity of provision in tax statute requiring one person to collect tax imposed upon another. 4 L Ed 2d 1974.

Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 ALR3d 1342.

goods, which sales occur on land held in trust for a federally recognized Indian tribe, where such sales are made to nontribal members, although the state may not tax such sales where they are made to Indians; specifically, a state has the authority to collect taxes on sales of cigarettes to nontribal members at a convenience store owned and operated by the Citizen Band Potawatomi Indian Tribe of Oklahoma on land within the state that is held by the Federal Government in trust for the benefit of the tribe, because (1) even though the doctrine of tribal sovereign immunity applies to the Potawatomis, that doctrine does not excuse a tribe from all obligations to assist in the collection of validly imposed state sales taxes, and (2) previous decisions of the United States Supreme Court, which decisions stand for the proposition that the doctrine of tribal sovereign immunity does not prevent a state from requiring Indian retailers doing business on tribal reservations to collect a state-imposed cigarette tax on their sales to nontribal members, did not depend upon the assertion of jurisdiction by the states involved under Public Law 280; although the tribal sovereign immunity doctrine bars the state from suing the tribe to enforce the tribe's liability for such taxes, this does not leave the state without any adequate alternatives, since (1) the Supreme Court has never held that individual agents or officers of a tribe are not liable for damages in actions brought by the state, (2) states may collect the sales tax on such cigarette sales from cigarette wholesalers, by either seizing unstamped cigarettes off the reservation or assessing wholesalers who supply unstamped cigarettes to tribal stores, (3) under 25 USCS § 476, states may enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection of this sort of tax, and (4) if none of these alternatives produce the revenues to which states are entitled, they may seek appropriate legislation from Congress.

Indians §§ 3, 32 — tribes — sovereignty

2. Indian tribes are domestic dependent nations which exercise inherent sovereign authority over their members and territories.

Indians §§ 10, 32 — tribal immunity from suit — Congress

3. Suits against Indian tribes are barred by tribal immunity, absent a clear waiver by the tribe or congressional abrogation.

Indians § 32; Setoff and Counterclaim § 41 — tribal immunity from suit — waiver

4. An Indian tribe—served by state tax authorities with an assessment letter demanding payment for taxes on cigarette sales made at a store owned and operated by the tribe on Indian land—does not waive its sovereign immunity from suit merely by filing an action in Federal District Court to enjoin the assessment, so as to permit the state to pursue a counterclaim seeking (1) enforcement of the assessment, and (2) an injunction barring the tribe from selling cigarettes in the future without collecting and remitting state taxes.

Courts § 775; Indians §§ 10, 32 — congressional authority — tribal immunity — adherence to precedent

5. The United States Supreme

Court will not modify the long-established principle of Indian tribal sovereign immunity, so as to permit a state to maintain an action seeking enforcement of a cigarette sales tax assessment against an Indian tribe, given that (1) the principle was originally enunciated by the Supreme Court and has been reaffirmed in a number of cases, and (2) although Congress is at liberty to dispense with Indian tribes' sovereign immunity from suit or to limit it, and has occasionally authorized limited classes of suits against Indian tribes, Congress has never authorized suits to enforce tax assessments, and instead has consistently reiterated its approval of the immunity doctrine.

Indians § 26 — tribal self-government

6. The Indian Financing Act of 1974 (25 USCS §§ 1451 et seq.) and the Indian Self-Determination and Education Assistance Act (25 USCS §§ 450 et seq.) reflect Congress' desire to promote the goal of Indian self-government, including the overriding goal of encouraging tribal self-sufficiency and economic development.

Indians § 9; Sales and Use Taxes § 5 — assessment — tribal immunity — what constitutes "reservation"

7. Even if a tract of property held by the Federal Government in trust for the benefit of an Indian tribe has not been formally designated as a "reservation," such property qualifies as a "reservation" for purposes of tribal sovereign immunity, affecting the ability of a state to maintain against the tribe an action seeking enforcement of a sales tax assessment for cigarette sales at a convenience store owned and operated by the tribe on such property, because the property has been validly set apart for the use of the Indians as such under the superintendence of the government.

Appeal §§ 1087.5(2), 1088, 1139 — raising tax issue below — petition for certiorari — briefs

8. The United States Supreme Court—in reviewing on certiorari a case in which (1) an Indian tribe sued in Federal District Court to enjoin a state's assessment of sales taxes allegedly due from past sales of cigarettes at a convenience store owned and operated by the tribe on Indian land, (2) the state counterclaimed seeking enforcement of the assessment and an injunction barring the tribe from selling cigarettes in the future without collecting and remitting state taxes on those sales, and (3) the Supreme Court has held that the doctrine of tribal sovereign immunity prevented the state from maintaining such a claim—has the authority to decide whether tribal immunity prevents the state from prospectively requiring the tribe to collect the tax on cigarette sales to nontribal members, even though the tribe's complaint did not raise this issue, but only challenged the state's power to require payment of the previously uncollected taxes, because (1) the tribe's complaint alleged that the state lacked authority to impose a sales tax directly on the tribe; (2) although neither court below need have reached the issue, the District Court did hold that the tribe could be required to collect the tax on sales to nontribal members, and a Federal Court of Appeals reversed the District Court's decision on that point; (3) the issue was fairly subsumed in the questions presented in the petition for certiorari; and (4) both parties briefed the issue.

SYLLABUS BY REPORTER OF DECISIONS

Although, for many years, respondent Indian Tribe has sold cigarettes at a convenience store that it owns and operates in Oklahoma on land held in trust for it by the Federal Government, it has never collected Oklahoma's cigarette tax on these sales. In 1987, petitioner, the Oklahoma Tax Commission (Oklahoma or Commission), served the Tribe with an assessment letter, demanding that it pay taxes on cigarette sales occurring between 1982 and 1986. The Tribe filed suit in the District Court to enjoin the assessment, and Oklahoma counterclaimed to enforce the assessment and to enjoin the Tribe from making future sales without collecting and remitting state taxes. The court refused to dismiss the counterclaims on the Tribe's motion, which was based on the assertion that the Tribe had not waived its sovereign immunity from suit. The court held on the merits that the Commission lacked authority to tax on-reservation sales to tribal members or to tax the Tribe directly, and therefore that the Tribe was immune from Oklahoma's suit to collect past unpaid taxes directly, but that the Tribe could be required to collect taxes prospectively for on-reservation sales to nonmembers. The Court of Appeals reversed, holding, inter alia, that the lower court erred in entertaining Oklahoma's counterclaims because the Tribe enjoys absolute sovereign immunity from suit and had not waived that immunity by filing its action for injunctive relief, and that Oklahoma lacked authority to tax any on-reservation sales, whether to tribesmen or nonmembers.

Held: Under the doctrine of tribal sovereign immunity, a State that has not asserted jurisdiction over Indian lands under Public Law 280 may not tax sales of goods to tribesmen occurring on land held in trust for a federally recognized Indian tribe, but is free to collect taxes on such sales to nonmembers of the tribe.

(a) The Tribe did not waive its inherent sovereign immunity from suit merely by seeking an injunction against the Commission's proposed tax assessment. United States v United States Fidelity & Guaranty Co., 309 US 506, 511-512, 513, 84 L Ed 894, 60 S Ct 653. In light of this Court's reaffirmation, in a number of cases, of its longstanding doctrine of tribal sovereign immunity, and Congress' consistent reiteration of its approval of the doctrine in order to promote Indian self-government, self-sufficiency, and economic development, the Court is not disposed to modify or abandon the doctrine at this time. Nor is there merit to Oklahoma's contention that immunity should not apply because the Tribe's cigarette sales do not occur on a formally designated "reservation." Trust land qualifies as a reservation for tribal immunity purposes where, as here, it has been " 'validly set apart for the use of the Indians as such, under the superintendence of the Government.' " United States v John, 437 US 634, 648-649, 57 L Ed 2d 489, 98 S Ct 2541. Mescalero Apache Tribe v Jones, 411 US 145, 148-149, 36 L Ed 2d 114, 93 S Ct 1267, which approved nondiscriminatory state taxation of activities on nonreservation, nontrust Government land leased by Indians, is not to the contrary.

(b) Nevertheless, the Tribe's sovereign immunity does not deprive Oklahoma of the authority to tax cigarette sales to nonmembers of the Tribe at the Tribe's store, and the Tribe has an obligation to assist in the collection of validly imposed state taxes on such sales. Moe v Confederated Salish and Kootenai Tribes, 425 US 463, 482, 483, 48 L Ed 2d 96, 96 S Ct 1634; Washington v Confederated Tribes of Colville Reservation, 447 US 134, 65 L Ed 2d 10, 100 S Ct 2069. This case is not distinguishable from Moe and Colville on the ground that Oklahoma disclaimed jurisdiction over Indian lands upon entering the Union and did not reassert jurisdiction over civil causes of action in such lands as permitted by Public Law 280. Neither of those cases depended on the assertion of such jurisdiction by the State in question, and it is simply incorrect to conclude that the Public Law was the essential (yet unspoken) basis for the Court's decision in Colville. Although the Tribe's sovereign immunity bars Oklahoma from pursuing its most efficient remedy—a lawsuit—to enforce its rights, adequate alternatives may exist, since individual Indians employed in "smoke-shops" may not share tribal immunity, and since States are free to collect their sales taxes from cigarette wholesalers or to enter into mutually satisfactory agreements with tribes for the collection of taxes. If these alternatives prove to be unsatisfactory, States may seek appropriate legislation from Congress.

888 F2d 1303, affirmed in part and reversed in part.

Rehnquist, C. J., delivered the opinion for a unanimous Court. Stevens, J., filed a concurring opinion.

APPEARANCES OF COUNSEL

David Allen Miley argued the cause for petitioner.

Edwin S. Kneedler argued the cause for the United States as amicus curiae, by special leave of court.

Michael Minnis argued the cause for respondent.

Briefs of Counsel, p 1291, infra.

OPINION OF THE COURT

Chief Justice **Rehnquist** delivered the opinion of the Court.

[1a] The issue presented in this case is whether a State that has not asserted jurisdiction over Indian lands under Public Law 280 may validly tax sales of goods to tribesmen and nonmembers occurring on land held in trust for a federally recognized Indian tribe. We conclude that under the doctrine of tribal sovereign immunity, the State may not tax such sales to Indians, but remains free to collect taxes on sales to nonmembers of the tribe.

Respondent, the Citizen Band Potawatomi Indian Tribe of Oklahoma (Potawatomis or Tribe), owns and operates a convenience store in Oklahoma on land held in trust for it by the Federal Government. For many years, the Potawatomis have sold cigarettes at the convenience store without collecting Oklahoma's state cigarette tax on these sales. In 1987, petitioner, the Oklahoma Tax Commission (Oklahoma or Commission), served the Potawatomis with an assessment letter, demanding that they pay $2.7 million for taxes on cigarette sales occurring between 1982 and 1986. The Potawatomis filed suit to enjoin the assessment in the United States District Court for the Western District of Oklahoma.

Oklahoma counterclaimed, asking the District Court to enforce its $2.7 million claim against the Tribe and to enjoin the Potawatomis from selling cigarettes in the future without collecting

[498 US 508]

and remitting state taxes on those sales. The Potawatomis moved to dismiss the counterclaim on the ground that the Tribe had not waived its sovereign immunity and therefore could not be sued by the State. The District Court denied the Potawatomis' motion to dismiss and proceeded to trial. On the merits, the District Court concluded that the Commission lacked the authority to tax the on-reservation cigarette sales to tribal members or to tax the Tribe directly. It held, therefore, that the Tribe was immune from Oklahoma's suit to collect past unpaid taxes directly from the Tribe. Nonetheless, the District Court held that Oklahoma could require the Tribe to collect taxes prospectively for on-reservation sales to nonmembers of the tribe. Accordingly, the court ordered the Tribe to collect taxes on sales to nontribal members, and to comply with all statutory recordkeeping requirements.

The Tribe appealed the District Court's denial of its motion to dismiss and the court's order requiring it to collect and remit taxes on sales to nonmembers. The United States Court of Appeals for the Tenth Circuit reversed. 888 F2d 1303 (1989). That court held that the District Court erred in entertaining Oklahoma's counterclaims because the Potawatomis enjoy absolute sovereign immunity from suit, and had not waived that immunity by filing an action for injunctive relief. The Court of Appeals further held that Oklahoma lacked the authority to impose a tax on any sales that occur on the reservation, regardless of whether they are to tribesmen or nonmembers. It concluded that "because the convenience store is located on land over which the Potawatomis retain sovereign powers, Oklahoma has no authority to tax the store's transactions unless Oklahoma has received an independent jurisdictional grant of authority from Congress." Id., at 1306. Finding no independent jurisdictional grant of authority to tax the Potawatomis, the Court of Appeals ordered the District Court to grant the Potawatomis' request for an injunction.

[498 US 509]

We granted certiorari to resolve an apparent conflict with this Court's precedents and to clarify the law of sovereign immunity with respect to the collection of sales taxes on Indian lands. 498 US 806, 112 L Ed 2d 14, 111 S Ct 37 (1990). We now affirm in part and reverse in part.

I

[2-4] Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories. Cherokee Nation v Georgia, 5 Pet 1, 17, 8 L Ed 25 (1831). Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation. Santa Clara Pueblo v Martinez, 436 US 49, 58, 56 L Ed 2d 106, 98 S Ct 1670 (1978). Petitioner acknowledges that Indian tribes generally enjoy sovereign immunity, but argues that the Potawatomis waived their sovereign immunity by seeking an injunction against the Commission's proposed tax assessment. It argues that, to the extent that the Commission's counterclaims were "compulsory" under Federal Rule of Civil Procedure 13(a), the District Court did not need any independent jurisdictional basis to hear those claims.

We rejected an identical contention over a half-century ago in United States v United States Fidelity & Casualty Co., 309 US 506, 511-512, 84 L Ed 894, 60 S Ct 653 (1940). In that case, a surety bondholder claimed that a federal court had jurisdiction to hear its state-law counterclaim against an Indian Tribe because the Tribe's initial action to enforce the bond constituted a waiver of sovereign immunity. We held that a tribe does not waive its sovereign immunity from actions that could not otherwise be brought against it merely because those actions were pleaded in a counterclaim to an action filed by the tribe. Id., at 513, 84 L Ed 894, 60 S Ct 653. "Possessing . . . immunity from direct suit, we are of the opinion [the Indian nations] possess a similar immunity from cross-suits." Ibid. Oklahoma does not argue that it received congressional authorization to adjudicate a counterclaim against the Tribe, and the case is therefore controlled by Fidelity & Guaranty. We uphold the Court of Appeals' **[498 US 510]** determination that the Tribe did not waive its sovereign immunity merely by filing an action for injunctive relief.

Oklahoma offers an alternative, and more far-reaching, basis for reversing the Court of Appeals' dismissal of its counterclaims. It urges this Court to construe more narrowly, or abandon entirely, the doctrine of tribal sovereign immunity. Oklahoma contends that the tribal sovereign immunity doctrine impermissibly burdens the administration of state tax laws. At the very least, Oklahoma proposes that the Court modify Fidelity & Guaranty, because tribal business activities such as cigarette sales are now so detached from traditional tribal interests that the tribal-sovereignty doctrine no longer makes sense in this context. The sovereignty doctrine, it maintains, should be limited to the tribal courts and the internal affairs of tribal government, because no purpose is served by insulating tribal business ventures from the authority of the States to administer their laws.

[5, 6] A doctrine of Indian tribal sovereign immunity was originally enunciated by this Court and has been reaffirmed in a number of cases. Turner v United States, 248 US 354, 358, 63 L Ed 291, 39 S Ct 109 (1919); Santa Clara Pueblo v Martinez, supra, at 58, 56 L Ed 2d 106, 98 S Ct 1670. Congress has always been at liberty to dispense with such tribal immunity or to limit it. Although Congress has occasionally authorized limited classes of suits against Indian tribes, it has never authorized suits to enforce tax assessments. Instead, Congress has consistently reiterated its approval of the immunity doctrine. See, e.g., Indian Financing Act of 1974, 88 Stat 77, 25 USC § 1451 et seq. [25 USCS §§ 1451 et seq.], and the Indian Self-Determination and Education Assistance Act, 88 Stat 2203, 25 USC § 450 et seq. [25 USCS §§ 450 et seq.]. These Acts reflect Congress' desire to promote the "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." California v Cabazon Band of Mission Indians, 480 US 202, 216, 94 L Ed 2d 244, 107 S Ct 1083 (1987). Under these circumstances, we are not disposed to modify the long-established principle of tribal sovereign immunity.

[498 US 511]

[7] Finally, Oklahoma asserts that even if sovereign immunity applies to direct actions against tribes arising from activities on the reservation, that immunity should not apply to the facts of this case. The State contends that the Potawatomis' cigarette sales do not, in fact, occur on a "reservation." Relying upon our decision in Mescalero Apache Tribe v Jones, 411 US 145, 36 L Ed 2d 114, 93 S Ct 1267 (1973), Oklahoma argues that the tribal convenience store should be held subject to State tax laws because it does not operate on a formally designated "reservation," but on land held in trust for the Potawatomis. Neither Mescalero nor any other precedent of this Court has ever drawn the distinction between tribal trust land and reservations that Oklahoma urges. In United States v John, 437 US 634, 57 L Ed 2d 489, 98 S Ct 2541 (1978), we stated that the test for determining whether land is Indian country does not turn upon whether that land is denominated "trust land" or "reservation." Rather, we ask whether the area has been " 'validly set apart for the use of the Indians as such, under the superintendence of the Government.' " Id., at 648-649, 57 L Ed 2d 489, 98 S Ct 2541; see also United States v McGowan, 302 US 535, 539, 82 L Ed 410, 58 S Ct 286 (1938).

Mescalero is not to the contrary; that case involved a ski resort outside of the reservation boundaries operated by the Tribe under a 30-year lease from the Forest Service. We said that "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." 411 US, at 148-149, 36 L Ed 2d 114, 93 S Ct 1267. Here, by contrast, the property in question is held by the Federal Government in trust for the benefit of the Potawatomis. As in John, we find that this trust land is "validly set apart" and thus qualifies as a reservation for tribal immunity purposes. 437 US, at 649, 57 L Ed 2d 489, 98 S Ct 2541.

II

[8] Oklahoma attacks the conclusion of the Court of Appeals that the sovereign immunity of the Tribe prevents it from

[498 US 512]

being liable for the collection of state taxes on the sale of cigarettes to nonmembers of the Tribe. The Tribe, in turn, argues that this issue is not properly before us. It observes that the only issue presented in its prayer for an injunction was whether Oklahoma could require it to pay the challenged assessment for previously uncollected taxes. The complaint did not challenge Oklahoma's authority to require the Tribe to collect the sales tax prospectively, and thus, the Tribe argues, that question was never put in issue.

We do not agree. The Tribe's complaint alleged that Oklahoma lacked authority to impose a sales tax directly upon the Tribe. The District Court held that the Tribe could be required to collect the tax on sales to nonmembers. The Court of Appeals reversed the decision of the District Court on this point. While neither of these courts need have reached that question, they both did. The question is fairly subsumed in the "questions presented" in the petition for certiorari, and both parties have briefed it. We have the authority to decide it and proceed to do so. See Vance v Terrazas, 444 US 252, 258-259, n 5, 62 L Ed 2d 461, 100 S Ct 540 (1980).

[1b] Although the doctrine of tribal sovereign immunity applies to the Potawatomis, that doctrine does not excuse a tribe from all obligations to assist in the collection of validly imposed state sales taxes. Washington v Confederated Tribes of Colville Reservation, 447 US 134, 65 L Ed 2d 10, 100 S Ct 2069 (1980). Oklahoma argues that the Potawatomis' tribal immunity notwithstanding, it has the authority to tax sales of cigarettes to nonmembers of the Tribe at the Tribe's convenience store. We agree. In Moe v Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), this Court held that Indian retailers on an Indian reservation may be required to collect all state taxes applicable to sales to non-Indians. We determined that requiring the tribal seller to collect these taxes was a minimal burden justified by the State's interest in assuring the payment of these concededly lawful taxes. Id., at 483, 48 L Ed 2d 96, 96 S Ct 1634. "Without the simple expedient of having the retailer collect the sales tax

[498 US 513]

from non-Indian purchasers, it is clear that wholesale violations of the law by the latter class will go virtually unchecked." Id., at 482, 48 L Ed 2d 96, 96 S Ct 1634. Only four years later we reiterated this view, ruling that tribal sellers are obliged to collect and remit state taxes on sales to nonmembers at Indian smoke-shops on reservation lands. Colville, supra.

The Court of Appeals thought this case was distinguishable from Moe and Colville. It observed the State of Washington had asserted jurisdiction over civil causes of action in Indian country as permitted by Public Law 280. Pub L 83-280, 67 Stat 588. The court contrasted Colville to this case, in which Oklahoma disclaimed jurisdiction over Indian lands upon entering the Union and did not reassert jurisdiction over these lands pursuant to Public Law 280. The Court of Appeals concluded that because Oklahoma did not elect to assert jurisdiction under Public Law 280, the Potawatomis were immune from any requirement of Oklahoma state tax law.

Neither Moe nor Colville depended upon the State's assertion of jurisdiction under Public Law 280. Those cases stand for the proposition that the doctrine of tribal sovereign immunity does not prevent a State from requiring Indian retailers doing business on tribal reservations to collect a state-imposed cigarette tax on their sales to nonmembers of the Tribe. Colville's only reference to Public Law 280 relates to a concession that the statute did *not* furnish a basis for taxing sales to tribe members. 447 US, at 142, n 8, 65 L Ed 2d 10, 100 S Ct 2069. Public Law 280 merely permits a State to assume jurisdiction over "civil causes of action" in Indian country. We have never held that Public Law 280 is independently sufficient to confer authority on a State to extend the full range of its regulatory authority, including taxation, over Indians and Indian reservations. Bryan v Itasca County, 426 US 373, 48 L Ed 2d 710, 96 S Ct 2102 (1976); see also Rice v Rehner, 463 US 713, 734, n 18, 77 L Ed 2d 961, 103 S Ct 3291 (1983); Cabazon, 480 US at 208-210, and n 8, 94 L Ed 2d 244, 107 S Ct 1083. Thus, it is simply

[498 US 514]

incorrect to conclude that Public Law 280 was the essential (yet unspoken) basis for this Court's decision in Colville.

In view of our conclusion with respect to sovereign immunity of the Tribe from suit by the State, Oklahoma complains that, in effect, decisions such as Moe and Colville give them a right without any remedy. There is no doubt that sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded that it lacks any adequate alternatives. We have never held that individual agents or officers of a tribe are not liable for damages in actions brought by the State. See Ex parte Young, 209 US 123, 52 L Ed 714, 28 S Ct 441 (1908). And under today's decision, States may of course collect the sales tax from cigarette wholesalers, either by seizing unstamped cigarettes off the reservation, Colville, supra, at 161-162, 65 L Ed 2d 10, 100 S Ct 2069, or by assessing wholesalers who supplied unstamped cigarettes to the tribal stores, City Vending of Muskogee, Inc. v Oklahoma Tax Comm'n, 898 F2d 122 (CA10 1990). States may also enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection of this sort of tax. See 48 Stat 987, as amended, 25 USC § 476 [25 USCS § 476]. And if Oklahoma and other States similarly situated find that none of these alternatives produce the revenues to which they are entitled, they may of course seek appropriate legislation from Congress.

The judgment of the Court of Appeals is accordingly affirmed in part and reversed in part.

SEPARATE OPINION

Justice **Stevens**, concurring.

The doctrine of sovereign immunity is founded upon an anachronistic fiction. See Nevada v Hall, 440 US 410, 414-416, 59 L Ed 2d 416, 99 S Ct 1182 (1979). In my opinion all Governments—federal, state, and tribal—should generally be accountable for their illegal conduct. The rule that an Indian tribe is immune from an action for damages absent its consent is, however, an established part of our law. See United States v United States Fidelity & Guaranty Co. 309 US 506, 512-513, 84 L Ed 894, 60 S Ct 653

[498 US 515]

(1940). Nevertheless, I am not sure that the rule of tribal sovereign immunity extends to cases arising from a tribe's conduct of commercial activity outside its own territory, cf. 28 USC § 1605(a) [28 USCS § 1605(a)] ("A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . (2) in which the action is based upon a commercial activity carried on in the United States by a foreign state . . . "), or that it applies to claims for prospective equitable relief against a tribe, cf. Edelman v Jordan, 415 US 651, 664-665, 39 L Ed 2d 662, 94 S Ct 1347 (1974) (Eleventh Amendment bars suits against States for retroactive monetary relief, but not for prospective injunctive relief).

In analyzing whether the Citizen Band Potawatomi Indian Tribe can be held prospectively liable for taxes on the sale of cigarettes, the Court today in effect acknowledges limits to a tribe's sovereign immunity, although it does not do so explicitly. The Court affirms the Court of Appeals' holding that the Oklahoma Tax Commission's counterclaim against the Tribe was properly dismissed on grounds of the Tribe's sovereign immunity, but then proceeds to address the precise question raised in the counterclaim—whether the Tribe in the future can be assessed for taxes on its sales of cigarettes. The Court indulges in this anomaly by reasoning that the issue of the Tribe's prospective liability "is fairly subsumed" in the Tribe's main action seeking to have the Tax Commission enjoined from collecting back taxes. See ante, at 512, 112 L Ed 2d, at 1122.

In my opinion, however, the issue of prospective liability is properly presented only in the tax commission's counterclaim. It is quite possible to decide that the Tribe cannot be liable for past sales taxes which it never collected without going on to decide whether the tax commission may require the Tribe to collect state taxes on its sales in the first place. In my opinion the Court correctly reaches the issue of the Tribe's prospective liability and correctly holds that the State may collect taxes on tribal sales to non-Indians. My purpose in writing separately is to emphasize that the Court's holding

in effect rejects the argument that this governmental entity—the Tribe—is completely immune from legal process. By addressing the substance of the tax commission's claim for prospective injunctive relief against the Tribe, the Court today recognizes that a tribe's sovereign immunity from actions seeking money damages does not necessarily extend to actions seeking equitable relief.

AIR COURIER CONFERENCE OF AMERICA, Petitioner

v

AMERICAN POSTAL WORKERS UNION, AFL-CIO, et al.

498 US 517, 112 L Ed 2d 1125, 111 S Ct 913

[No. 89-1416]

Argued November 28, 1990. Decided February 26, 1991.

Decision: Postal workers held to lack standing to bring suit under 5 USCS § 702 to challenge Postal Service regulation permitting international remailing by private couriers.

SUMMARY

The Private Express Statutes (PES) (18 USCS §§ 1693-1699, 39 USCS §§ 601-606) codify the United States Postal Service's monopoly over the carriage of letters in and from the United States. Pursuant to a provision of the PES (39 USCS § 601(b)), which provision allows the Postal Service to suspend the PES restrictions on any mail route where the public interest so requires, the Postal Service issued a regulation authorizing "international remailing," a practice by which private couriers deposit with foreign postal services letters destined for foreign addresses. A postal workers' union and a letter carriers' union, challenging the regulation, sued the Postal Service in the United States District Court for the District of Columbia pursuant to the judicial review provisions of the Administrative Procedure Act (APA) (5 USCS § 702). The unions alleged that (1) the decision to permit international remailing, with its attendant loss of revenue to the Postal Service, would inflict harm on union members through the loss of employment opportunities, and (2) the rule-making record was inadequate to support a finding that such a suspension of the PES was in the public interest. The District Court, granting summary judgment in favor of the Postal Service, said that (1) although the unions had shown threatened injury, they lacked standing to challenge the regulation, because the unions' asserted interest in retention of employment opportunities did not fall within the "zone of interests" protected by the PES; and (2) the Postal Service's decision was not in excess of statutory authority and was not arbitrary, capricious, or an abuse of discretion (701 F Supp 880). On appeal, the United States Court of Appeals

Briefs of Counsel, p 1292, infra.

for the District of Columbia Circuit—remanding the case to the District Court to vacate the grant of summary judgment—held that (1) the unions were within the zone of interests of the PES, because the PES were an integral part of a comprehensive statutory scheme that addressed the welfare and employment of postal employees, and thus the unions had standing, and (2) the Postal Service's regulation was arbitrary and capricious agency action (282 App DC 5, 891 F2d 304).

On certiorari, the United States Supreme Court reversed. In an opinion by Rehnquist, Ch. J., joined by White, O'Connor, Scalia, Kennedy, and Souter, JJ., it was held that (1) the unions were not within the zone of interests sought to be protected by the PES, given that (a) the language of certain provisions of the PES (18 USCS § 1696(c), 39 USCS § 601(a)) indicates that Congress' intent in enacting the PES was not to protect jobs with the Postal Service, but rather to insure the receipt of necessary revenues for the Postal Service, (b) the legislative history of the PES indicates that the postal monopoly exists to insure that postal services will be provided to the citizenry at large, and not to secure employment for postal workers, and (c) although the general codification of postal statutes embraced in the 1970 Postal Reorganization Act (PRA) (39 USCS §§ 101 et seq.) includes both the PES and labor-management provisions, none of the PES provisions has any integral relationship with the PRA labor-management provisions, and the PRA legislative history does not suggest that those members of Congress who were concerned with postal reforms saw any connection between the PES and the labor-management provisions; (2) thus, the unions lacked standing to challenge the Postal Service's regulation; and (3) the Supreme Court would not decide whether 39 USCS § 410(a)—which provides that certain provisions of the APA do not apply to the exercise of the Postal Service's powers—exempts Postal Service action from judicial review under 5 USCS § 702, since this issue (a) was raised for the first time by the Postal Service in its brief in opposition to the petition for certiorari, and (b) could properly be waived by the parties.

Stevens, J., joined by Marshall and Blackmun, JJ., concurring in the judgment, expressed the view that under the doctrine of judicial restraint, the court should have relied solely on 39 USCS § 410(a)—rather than on the hypothetical question of standing—in holding that the unions' challenge must be dismissed, given that (1) there is no ambiguity in the text of § 410(a); and (2) it was not necessary for the majority to decide whether the objection to judicial review, based on § 410(a), could properly be waived by the Federal Government, since such a matter was one that the Supreme Court could properly notice on its own motion.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Administrative Law § 219; Postal Service § 42 — right to judicial review of agency action — zone of interests — postal monopoly laws

1a-1e. Unions representing United States Postal Service employees lack standing to bring suit under a provision of the Administrative Procedure Act (5 USCS § 702) to challenge the Postal Service's suspension of the operation of the Private Express Statutes (PES) (18 USCS §§ 1693-1699, 39 USCS §§ 601-606) with respect to international remailing by private courier services—notwith-

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2 Am Jur 2d, Administrative Law §§ 575, 576; 32A Am Jur 2d, Federal Practice and Procedure § 1237; 62 Am Jur 2d, Post Office §§ 60, 117, 120, 121

2 Federal Procedure, L Ed, Administrative Procedure §§ 2:198-2:207; 28 Federal Procedure, L Ed, Postal Service § 63:298

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review §§ 3:297, 3:335

1A Am Jur Pl & Pr Forms (Rev), Administrative Law, Forms 226, 261

5 USCS § 702; 18 USCS §§ 1693-1699; 39 USCS §§ 410(a), 601-606

L Ed Digest, Administrative Law §§ 219, 223; Postal Service § 42

L Ed Index, Administrative Procedure Acts; Parties; Postal Reorganization Act; Postal Service

Index to Annotations, Administrative Law; Parties; Postal Reorganization Act; Post Office

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Who is "party aggrieved," so as to be entitled to petition Court of Appeals for review of final order of administrative agency, under 28 USCS § 2344. 88 ALR Fed 341.

Validity, construction, and application of 18 USCS § 1696, making it criminal offense to establish any private express for conveyance of letters or packets. 43 ALR Fed 664.

standing the unions' allegation that such a suspension would result in adverse effects on the employment opportunities of postal workers —because such employees are not within the zone of interests sought to be protected by the PES, given that (1) the language of certain provisions of the PES (18 USCS § 1696(c), 39 USCS § 601(a)) indicates that Congress' intent in enacting the PES—which create a monopoly by the Postal Service over the carriage of letters in and from the United States—was not to protect jobs with the Postal Service, but rather to insure the receipt of necessary revenues for the Postal Service, (2) the legislative history of the PES indicates that the postal monopoly exists to insure that postal services will be provided to the citizenry at large, and not to secure employment for postal workers, and (3) although the general codification of postal statutes embraced in the 1970 Postal Reorganization Act (PRA) (39 USCS §§ 101 et seq.) includes both the PES and labor-management provisions, none of the PES provisions has any integral relationship with the PRA labor-management provisions, and the PRA legislative history does not suggest that those members of Congress who were concerned with postal reforms saw any connection between the PES and the labor-management provisions.

Postal Service § 42 — postal monopoly laws — purpose

2a, 2b. The United States Postal Service's monopoly over the carriage of letters in and from the United States, which monopoly was created pursuant to the Private Express Statutes (18 USCS §§ 1693-1699, 39 USCS §§ 601-606), is a revenue protection measure for the Postal Service to enable it to fulfill its mission; the postal monopoly exists to insure that postal services will be provided to the citizenry at large.

Appeal §§ 1087.5(2), 1088, 1112.5 — issue not raised below — question on certiorari — briefs

3a, 3b. On certiorari to review a United States Court of Appeals decision involving the standing of United States Postal Service employees' unions to challenge the Postal Service's suspension of the operation of the Private Express Statutes (18 USCS §§ 1693-1699, 39 USCS §§ 601-606) with respect to international remailing by private courier services, the United States Supreme Court will decline to decide whether 39 USCS § 410(a) exempts Postal Service action from judicial review under provisions of the Administrative Procedure Act (5 USCS § 702), where this issue (1) was not argued to or considered by the courts below, (2) was not raised in the petition for certiorari, (3) was not encompassed by the questions presented upon which the Supreme Court based its grant of certiorari, and (4) was raised for the first time by the Postal Service in its brief in opposition to the petition for certiorari.

Administrative Law §§ 207, 305 — court review — jurisdiction — waiver of defense

4a, 4b. The judicial review provisions of the Administrative Procedure Act (APA) (5 USCS §§ 701-706) are not jurisdictional, and therefore a defense based on an exemption from the APA may properly be waived by the Federal Government; thus, in an action challenging a United States Postal Service regulation, the issue whether 39 USCS § 410(a) exempts Postal Service action from judicial review under the APA may properly be waived by the parties.

Courts § 14; Evidence § 103 — cause of action — question of jurisdiction — assumption

5a, 5b. The question whether a cause of action exists (1) is not a question of jurisdiction, and (2) may properly be assumed without being decided.

Administrative Law §§ 219, 223 — right to judicial review of agency action — aggrievement — zone of interests

6. To establish a party's standing, under a provision of the Administrative Procedure Act (5 USCS § 702), to challenge a federal agency's action, it must be established that (1) the party (a) has suffered a legal wrong because of the challenged agency action, or (b) is adversely affected or aggrieved by the agency action within the meaning of a relevant statute; and (2) the injury complained of—the party's aggrievement, or the adverse effect upon the party—falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis of the complaint.

Appeal § 1662 — effect of decision on other grounds

7. On certiorari to review a United States Court of Appeals decision—which held that (1) United States Postal Service employees' unions had standing to bring suit under § 702 of the Administrative Procedure Act (5 USCS § 702) to challenge the Postal Service's suspension of the operation of the Private Express Statutes (PES) (18 USCS §§ 1693-1699, 39 USCS §§ 601-606) with respect to international remailing by private courier services, and (2) the Postal Service, in so suspending the PES, failed to comply with the mandate of 39 USCS § 601(b) that the PES be suspended only if the public interest so requires—the United States Supreme Court will not reach the merits of the unions' claim, where the Supreme Court holds that the unions lack standing to challenge the Postal Service's action.

SYLLABUS BY REPORTER OF DECISIONS

The United States Postal Service's monopoly over the carriage of letters in and for the Nation is codified in a group of statutes known as the Private Express Statutes (PES). The monopoly was created by Congress as a revenue protection measure for the Postal Service vis-a-vis private competitors. Pursuant to a PES provision allowing it to suspend PES restrictions as to any mail route where the public interest so requires, the Postal Service issued a regulation authorizing a practice called "international remailing," which entails bypassing the Service and using private couriers to deposit with foreign postal services letters destined for foreign addresses. Respondent Unions, representing Postal Service employees, sued in the District Court, challenging the regulation pursuant to the judicial review provisions of the Administrative Procedure Act (APA), and claiming that the rulemaking record was inadequate to support a finding that the regulation's suspension of the PES was in the public interest. The Court of Appeals vacated the District Court's grant of summary judgment in favor of the Postal Service and petitioner Air Courier Conference of America (ACCA), holding that the Unions satisfied the zone-of-interests requirement for APA review under Clarke v Securities Industry Assn., 479 US 388, 93 L Ed 2d 757, 107 S Ct 750, and, on the merits, that the PES suspension was not justified by the public interest.

Held:

1. This Court declines to decide whether 39 USC § 410(a) [39 USCS 410(a)] exempts the Postal Service from judicial review under the APA, since the question was not argued to, nor considered by, either of the lower courts, was not raised by ACCA in its certiorari petition, was raised by the Postal Service for the first time in its brief in opposition to the petition, and is not encompassed by the questions presented upon which certiorari was granted.

2. The Unions do not have standing to challenge the Postal Service's suspension of the PES to permit private couriers to engage in international remailing. To establish APA standing under Clarke and similar cases, the Unions must show, among other things, that the claimed adverse effect on postal workers' employment opportunities resulting from the suspension is within the zone of interests encompassed by the PES. This they cannot do, since the language, see, e.g., 18 USC § 1896(c) [18 USCS § 1896(c)] and 39 USC § 601(a) [39 USCS § 601(a)], and legislative history of the PES demonstrate that, in enacting those statutes, Congress was concerned not with protecting postal employment or furthering postal job opportunities, but with the receipt of necessary revenues for the Postal Service. The PES enable the Service to fulfill its responsibilities to provide service to all communities at a uniform rate by preventing private couriers from competing selectively on the Service's most profitable routes. The postal monopoly, therefore, exists to protect the citizenry at large, not postal workers. Nor can the courts, in applying the zone-of-interests test, look beyond the PES to the 1970 Postal Reorganization Act (PRA), which, in addition to reenacting the PES without substantive changes, contains various labor-management provisions designed to improve pay, working conditions, and labor-management relations for postal employees. None of the PES provisions have any integral relationship with the PRA labor-management provisions, and the PRA's legislative history contains no indication that such a connection exists. It stretches the zone-of-interests test too far to say that, simply because the PES may be the linchpin of the Postal Service, those whom a different part of the PRA was designed to benefit may challenge a violation of the PES. Clarke, supra, at 401, 93 L Ed 2d 757, 107 S Ct 750, distinguished.

3. In light of the Unions' lack of standing, this Court does not reach the merits of their claim that the PES suspension was not in the public interest.

282 US App DC 5, 891 F2d 304, reversed.

Rehnquist, C. J., delivered the opinion of the Court, in which White, O'Connor, Scalia, Kennedy, and Souter, JJ., joined. Stevens, J., filed an opinion concurring in the judgment, in which Marshall and Blackmun, JJ., joined.

APPEARANCES OF COUNSEL

L. Peter Farkas argued the cause for petitioner.

Paul J. Larkin, Jr. argued the cause for the federal respondent supporting petitioner.

Keith E. Secular argued the cause for respondent.

Briefs of Counsel, p 1292, infra.

OPINION OF THE COURT

[498 US 519]

Chief Justice **Rehnquist** delivered the opinion of the Court.

[1a] This case requires us to decide whether postal employees are within the "zone of interests" of the group of statutes known as the Private Express Statutes (PES), so that they may challenge the action of the United States Postal Service in suspending the operation of the PES with respect to a practice of private courier services called "international remailing." We hold that they are not.

[2a] Since its establishment, the United States Postal Service has exercised a monopoly over the carriage of letters in and from the United States. The postal monopoly is codified in the PES, 18 USC §§ 1693-1699 [18 USCS §§ 1693-1699] and 39 USC §§ 601-606 [39 USCS §§ 601-606]. The monopoly was created by Congress as a revenue protection measure for the Postal Service to enable it to fulfill its mission. See, Regents of Univ. of Cal. v Public Employment Relations Bd., 485 US 589, 598, 99 L Ed 2d 664, 108 S Ct 1404 (1988). It prevents private competitors from offering service on low-cost routes at prices below those of the Postal Service, while leaving the Service with high-cost routes and insufficient means to fulfill its mandate of providing uniform rates and service to patrons in all areas, including those that are remote or less populated. See J. Haldi, Postal Monopoly: An Assessment of the Private Express Statutes 9 (1974); Craig & Alvis, The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages, 12 USFL Rev 57, 60, and n 8 (1977).

A provision of the PES allows the Postal Service to "suspend [the PES restrictions] upon any mail route where the public interest requires the suspension." 39 USC § 601(b) [39 USCS § 601(b)]. In 1979, the Postal Service suspended the PES restrictions for "extremely urgent letters," thereby allowing overnight delivery of letters by private courier services. 39 CFR § 320.6 (1990); 44 Fed Reg 61178 (1979). Private courier services, including members of petitioner-intervenor Air Courier Conference of America, relied on that suspension to

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engage in a practice called "international remailing." This entails bypassing the Postal Service and using private courier systems to deposit with foreign postal systems letters destined for foreign addresses. Believing this international remailing was a misuse of the urgent-letter suspension, the Postal Service issued a proposed modification and clarification of its regulation in order to make clear that the suspension for extremely urgent letters did not cover this practice. 50 Fed Reg 41462 (1985). The comments received in response to the proposed rule were overwhelmingly negative and focused on the perceived benefits of international remailing: Lower cost, faster delivery, greater reliability, and enhanced ability of United States companies to remain competitive in the international market. Because of the vigorous opposition to the proposed rule, the Postal Service agreed to reconsider its position and instituted a rulemaking "to remove the cloud" over the validity of the international remailing services. 51 Fed Reg 9852, 9853 (1986). After receiving additional comments and holding a public meeting on the subject, on June 17, 1986, the Postal Service issued a proposal to suspend operation of the PES for international remailing. Id., at 21929-21932. Additional comments were received, and after consideration of the record it had compiled, the Postal Service issued a final rule suspending the operation of the PES with respect to international remailing. Id., at 29637.

Respondents, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO (Unions), sued in the United States District Court for the District of Columbia, challenging the international remailing regulation pursuant to the judicial review provisions of the Administrative Procedure Act (APA), 5 USC § 702 [5 USCS § 702]. They claimed that the rulemaking record was inadequate to support a finding that the suspension of the PES for international remailing was in the public interest. Petitioner Air Courier Conference of America (ACCA) intervened.

On December 20, 1988, the District Court granted summary judgment in favor of the Postal Service and ACCA. American Postal Workers Union, AFL-CIO v United States Postal Service, 701 F Supp 880 (1988). The Unions appealed to the Court of Appeals for the District of Columbia Circuit, and that court vacated the grant of summary judgment. American Postal Workers Union, AFL-CIO v United States Postal Service, 282 US App DC 5, 891 F2d 304 (1989). It held that the Unions satisfied the zone-of-interests requirement for APA review under Clarke v Securities Industry Assn. 479 US 388, 93 L Ed 2d 757, 107 S Ct 750 (1987), and that the Postal Service's regulation was arbitrary and capricious because it relied on too narrow an interpretation of "the public interest." In determining that the Unions' interest in employment opportunities was protected by the PES, the Court of Appeals noted that the PES were reenacted as part of the Postal Reorganization Act (PRA), Pub L 91-375, 84 Stat 719, codified at 39 USC § 101 et seq. [39 USCS §§ 101 et seq.]. The Court of Appeals found that a "key impetus" and "principal purpose" of the PRA was "to implement various labor reforms that would improve pay, working conditions and labor-management relations for postal employees." 282 US App DC, at 10-11, 891 F2d, at 309-310. Reasoning that "[t]he Unions' asserted interest is embraced directly by the labor reform provisions of the PRA," id., at 11, 891 F2d, at 310, and that "[t]he PES constitute the linchpin in a statutory scheme concerned with maintaining an effective, financially viable Postal Service," ibid., the court concluded that "[t]he interplay between the PES and the entire PRA persuades us that there is an 'arguable' or 'plausible' relationship between the purposes of the PES and the interests of the Union[s]." Ibid. The Court of Appeals also held that "the revenue protective purposes of the PES, standing alone, plausibly relate to the Unions' interest in preventing the reduction of employment opportunities," since "postal workers benefit from the PES's

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function in ensuring a sufficient revenue base" for the Postal Service's activities. Ibid.

Addressing the merits of the Unions' challenge to the suspension order, the Court of Appeals held that it was arbitrary and capricious because the Postal Service had applied § 601(b)'s public interest test too narrowly by considering only the benefits of the international remail rule to the small segment of the Postal Service's consumer base that engages in international commerce. We granted certiorari, 496 US 904, 110 L Ed 2d 265, 110 S Ct 2584 (1990), and we now reverse.

[3a] The United States Postal Service, nominally a respondent, argues along with ACCA that the Unions do not have standing to challenge the Postal Service's suspension of the PES for international remailing. The Postal Service argues now that Congress precluded judicial review of Postal Service action under the APA by enacting 39 USC § 410(a) [39 USCS § 410(a)], which the Postal Service contends provides that Chapters 5 and 7 of Title 5 do not apply to the Postal Service.[1] Chapters 5 and 7 of Title 5 are the provisions of the APA dealing with "Administrative Procedure" (Chapter 5) and "Judicial Review" (Chapter 7).

[3b, 4a, 5a] The Postal Service raised this argument for the first time in its brief in opposition to the petition for writ of certiorari. It was not argued to either of the lower courts, and was not considered by either court below in deciding this case. This issue was not raised by ACCA in its petition for writ of certiorari, nor is it encompassed by the questions presented upon which we based our grant of certiorari.[2] Consequently,

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we decline to decide whether § 410(a) exempts the Postal Service from judicial review under the APA.[3]

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[1] Title 39 USC § 410 [39 USCS § 410] provides in pertinent part:

"[N]o Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service."

[2] The questions presented in this case are as follows:

"1. Are postal employees within the 'zone of interest' of the Private Express Statutes that establish and allow the United States Postal Service to suspend restrictions on the private carriage of letters when 'the public interest requires?'

"2. Did the Postal Service act unreasonably, arbitrarily, or capriciously in promulgating its international remail regulation under the 'public interest' standard for suspending the Private Express Statutes where it found no adverse effects on revenues and found general benefits to the public, competition, and users of remail services?" Brief for Petitioner i.

[3] **[4b, 5b]** The Postal Service argues that since "congressional preclusion of judicial review is in effect jurisdictional," Block v Community Nutrition Institute, 467 US 340, 353, n 4, 81 L Ed 2d 270, 104 S Ct 2450 (1984), the issue cannot be waived by the parties. We do not agree. Section 410, at most, exempts the Postal Service from the APA. The judicial review provisions of the APA are not jurisdictional, Califano v Sanders, 430 US 99, 51 L Ed 2d 192, 97 S Ct 980 (1977), so a defense based on exemption from the APA can be waived by the Government. Whether § 410(a) exempts the Postal Service from APA review is in essence a question of whether Congress intended to allow a certain cause of action against the Postal Service. Whether a cause of action exists is not a question of jurisdiction, and may be assumed without being decided. Burks v Lasker, 441 US 471, 476, n 5, 60 L Ed 2d 404, 99 S Ct 1831 (1979).

[6] To establish standing to sue under the APA, respondents must establish that they have suffered a legal wrong because of the challenged agency action, or are adversely affected or "aggrieved by agency action within the meaning of a relevant statute." 5 USC § 702 [5 USCS § 702]. Once they have shown that they are adversely affected, i. e., have suffered an "injury in fact," see Allen v Wright, 468 US 737, 751, 82 L Ed 2d 556, 104 S Ct 3315 (1984), the Unions must show that they are within the zone of interests sought to be protected through the PES. Lujan v National Wildlife Federation, 497 US 871, 111 L Ed 2d 695, 110 S Ct 3177 (1990); Clarke v Securities Industry Assn. 479 US 388, 93 L Ed 2d 757, 107 S Ct 750 (1987); Association of Data Processing Service Organizations, Inc. v Camp, 397 US 150, 25 L Ed 2d 184, 90 S Ct 827 (1970). Specifically, "the plaintiff must establish that the injury he complains of (his aggrievement, or the adverse effect upon him) falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the

legal basis for his complaint." Lujan, supra, at 883, 111 L Ed 2d 695, 110 S Ct 3177 (citing Clarke, supra, at 396-397, 93 L Ed 2d 757, 107 S Ct 750).

[1b] The District Court found that the Unions had satisfied the injury-in-fact test because increased competition through international remailing services might have an adverse effect on employment opportunities of postal workers. This finding of injury in fact was not appealed. The question before us, then, is whether the adverse effect on the employment opportunities of postal workers resulting from the suspension is within the zone of interests encompassed by the PES—the statutes which the Unions assert the Postal Service has violated in promulgating the international remailing rule.

The Court of Appeals found that the Unions had standing because "the revenue protective purposes of the PES, standing alone, plausibly relate to the Unions' interest in preventing the reduction of employment opportunities." 282 US App DC, at 11, 891 F2d, at 310. This view is mistaken, for it conflates the zone-of-interests test with injury in fact. In Lujan, this Court gave the following example illustrating how injury in fact does not necessarily mean one is within the zone of interests to be protected by a given statute:

> "[T]he failure of an agency to comply with a statutory provision requiring 'on the record' hearings would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings; but since the provision was obviously enacted to protect the interests of the parties to the proceedings and not those of the reporters, that company would not be 'adversely affected within the meaning' of the statute." 497 US, at 883, 111 L Ed 2d 695, 110 S Ct 3177.

We must inquire, then, as to Congress' intent in enacting the PES in order to determine whether postal workers were meant to be within the zone of interests protected by those statutes. The particular language of the statutes provides no support for respondents' assertion that Congress intended

to protect jobs with the

Postal Service.[4] In fact, the provisions of 18 USC § 1696(c) [18 USCS § 1696(c)], allowing private conveyance of letters if done on a one-time basis or without compensation, and 39 USC § 601(a) [39 USCS § 601(a)], allowing letters to be carried out of the mails if certain procedures are followed, indicate that the congressional concern was not with opportunities for postal

workers but with the receipt of necessary revenues for the Postal Service.

Nor does the history of this legislation—such as it is—indicate that the PES were intended for the benefit of postal workers. When the first statutes limiting private carriage of letters on post roads were enacted in 1792, the Post Office offered no pickup or delivery services. See C. Scheele, A Short History of the Mail Service 66, 91 (1970). Statutory authority to employ letter carriers was not enacted until two years later and was largely ignored until the late 1820's. Id., at 66. The 1792 restrictions on private carriage protected the Government's capital investment in the post roads, not the jobs of as yet virtually nonexistent postal employees. In 1825 and 1827, Acts were passed prohibiting the private carriage of letters through the use of stages or other vehicles, packet boats, or other vessels, § 19, ch 64 of Act of March 3, 1825, 4 Stat 107, and foot and horse posts, § 3, ch 61 of Act of March 2, 1827, 4 Stat 238. Postal employees cannot have been within the zone of interests of either the 1824 or 1827 Acts; those Acts targeted transportation of mail which even then was contracted out to private carriers. See W. Fuller, The American Mail: Enlarger of the Common Life 150 (1972).

Congress' consideration of the 1845 Act was the only occasion on which the postal monopoly was the subject of substantial debate. The 1845 statute, entitled "An Act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenues of the Post Office Department," 5 Stat 732, was the result of three circumstances, none of which involved the interests of postal employees. First, the Post Office Department continued to run substantial deficits in spite of high postage rates. HR Rep No. 477, 28th Cong, 1st Sess, 2-3, 5 (1844). Second, high postal rates enabled private expresses to make substantial inroads into the domestic market for delivery of letters and the 1825 and 1827 Acts proved unsuccessful in prosecuting them. Priest, The History of the

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[4] Title 18 USC § 1696 [18 USCS § 1696] provides:

"Private express for letters and packets

"(a) Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, shall be fined not more than $500 or imprisoned not more than six months, or both.

. . . . .

"(b) Whoever transmits by private express or other unlawful means, or delivers to any agent thereof, or deposits at any appointed place, for the purpose of being so transmitted any letter or packet, shall be fined not more than $50.

"(c) This chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only. Whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 601 of title 39, shall be observed as to each piece."

Title 39 USC § 601 [39 USCS § 601] provides:

"Letters carried out of the mail

"(a) A letter may be carried out of the mails when—

"(1) it is enclosed in an envelope;

"(2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;

"(3) the envelope is properly addressed;

"(4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;

"(5) any stamps on the envelope are canceled in ink by the sender; and

"(6) the date of the letter, of its transmission or receipt by the carrier is endorsed on the envelope in ink.

"(b) The Postal Service may suspend the operation of any part of this section upon any mail route where the public interest requires the suspension."

[498 US 527]

Postal Monopoly in the United States, 18 J Law & Econ, 33, 60 (1975) (citing United States v Gray, 26 F Cas 18 (No. 15, 253) (Mass 1840), and United States v Adams, 24 F Cas 761 (No. 14,421) (SDNY 1843)). Third, inauguration of the "penny post" in England quadrupled use of the mails, and it was thought that a substantial reduction in American postal rates would have the dual virtues of driving private expresses out of business and increasing mail volume of the Post Office. This, in turn, would help reduce the Post Office's deficit. Cong Globe, 28th Cong, 2d Sess, 213 (1845) (remarks of Sens. Simmons and Breese). See also HR Rep No. 477, supra, at 5.

[1c, 2b] The legislative history of the sections of the Act limiting private carriage of letters shows a twofold purpose. First, the Postmaster General and the States most distant from the commercial centers of the Northeast believed that the postal monopoly was necessary to prevent users of faster private expresses from taking advantage of early market intelligence and news of international affairs that had not yet reached the general populace through the slower mails. S Doc No. 66, 28th Cong, 2d Sess, 3-4 (1845). Second, it was thought to be the duty of the Government to serve outlying, frontier areas, even if it meant doing so below cost. HR Rep No. 477, supra, at 2-3. Thus, the revenue protection provisions were not seen as an end in themselves, nor in any sense as a means of ensuring certain levels of public employment, but rather were seen as the means to achieve national integration and to ensure that all areas of the Nation were equally served by the Postal Service.

The PES enable the Postal Service to fulfill its responsibility to provide service to all communities at a uniform rate by preventing private courier services from competing selectively with the Postal Service on its most profitable routes. If competitors could serve the lower cost segment of the market, leaving the Postal Service to handle the high-cost services, the Service would lose lucrative portions of its business,

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thereby increasing its average unit cost and requiring higher prices to all users.[5] See Report of the President's Commission on Postal Organization, Towards Postal Excellence, 94th Cong, 2d Sess, 129 (Comm Print 1968). The postal monopoly, therefore, exists to ensure that postal services will be provided to the citizenry at large, and not to secure employment for postal workers.

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[5] The PES are competition statutes that regulate the conduct of competitors of the Postal Service. The postal employees for whose benefit the Unions have brought suit here are not competitors of either the Postal Service or remailers. Employees have generally been denied standing to enforce competition laws because they lack competitive and direct injury. See, e. g., Adams v Pan American World Airways, Inc. 264 US App DC 174, 828 F2d 24 (1987), cert denied sub nom. Union de Transports Aeriens v Beckman, 485 US 934, 99 L Ed 2d 270, 108 S Ct 1109 (1988) (former airline employees denied standing to

[1d] The Unions' claim on the merits is that the Postal Service has failed to comply with the mandate of 39 USC § 601(b) [39 USCS § 601(b)] that the PES be suspended only if the public interest requires. The foregoing discussion has demonstrated that the PES were not designed to protect postal employment or further postal job opportunities, but the Unions argue that the courts should look beyond the PES to the entire 1970 PRA in applying the zone-of-interests test. The Unions argue that because one of the purposes of the labor-management provisions of the PRA was to stablize labor-management relations within the Postal Service, and because the PES is the "linchpin" of the Postal Service, employment opportunities of postal workers are arguably within the zone of interests covered by the PES. The Unions rely upon our opinion in Clarke v Securities Industry Assn. 479 US 388, 93 L Ed 2d 757, 107 S Ct 750 (1987), to support this contention.

[498 US 529]

Clarke is the most recent in a series of cases in which we have held that competitors of regulated entities have standing to challenge regulations. Clarke, supra; Investment Co. Institute v Camp, 401 US 617, 28 L Ed 2d 367, 91 S Ct 1091 (1971); Association of Data Processing Service Organizations, Inc. v Camp, 397 US 150, 25 L Ed 2d 184, 90 S Ct 827 (1970). In Clarke, we said that "we are not limited to considering the statute under which respondents sued, but may consider any provision that helps us to understand Congress' overall purposes in the National Bank Act." 479 US, at 401, 93 L Ed 2d 757, 107 S Ct 750. This statement, like all others in our opinions, must be taken in the context in which it was made. In the next paragraph of the opinion, the Court pointed out that 12 USC § 36 [12 USCS § 36], which the plaintiffs in that case claimed had been misinterpreted by the Comptroller, was itself "a limited exception to the otherwise applicable requirement of [12 USC] § 81 [12 USCS § 81]," limiting the places at which a national bank could transact business to its headquarters and any "branches" permitted by § 36. Thus the zone-of-interests test was to be applied not merely in the light of § 36, which was the basis of the plaintiffs' claim on the merits, but also in the light of § 81, to which § 36 was an exception.

The situation in the present case is quite different. The only relationship between the PES, upon which the Unions rely for their claim on the merits, and the labor-management provisions of the PRA, upon which the Unions rely for their standing, is that both were included in the general codification of postal statutes embraced in the PRA. The statutory provisions enacted and re-

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assert antitrust claim against airline that allegedly drove their former employer out of business); Curtis v Campbell-Taggart, Inc. 687 F2d 336 (CA10), cert denied, 459 US 1090, 74 L Ed 2d 937, 103 S Ct 576 (1982) (employees of corporation injured by anticompetitive conduct denied standing under antitrust laws).

enacted in the PRA are spread over some 65 pages in the United States Code and take up an entire title of that volume. We said in Lujan that "the relevant statute [under the APA] of course, is the statute whose violation is the gravamen of the complaint." 497 US, at 886, 111 L Ed 2d 695, 110 S Ct 3177. To adopt petitioners' contention would require us to hold that the "relevant statute" in this case is the PRA, with all of its various provisions united only by the fact that they deal with the Postal Service. But to accept this level of generality

[498 US 530]

in defining the "relevant statute" could deprive the zone-of-interests test of virtually all meaning.

Unlike the two sections of the National Bank Act discussed in Clarke, supra, none of the provisions of the PES have any integral relationship with the labor-management provisions of the PRA. When it enacted the PRA, Congress made no substantive changes to those portions of the PES codified in the Criminal Code, 18 USC §§ 1693-1699 [18 USCS §§ 1693-1699]; Congress readopted without change those portions of the PES codified in the Postal Service Code, 39 USC §§ 601-606 [39 USCS §§ 601-606]; and Congress required the Postal Service to conduct a 2-year study and reevaluation of the PES before deciding whether those laws should be modified or repealed. PRA, Pub L 91-375, § 7, 84 Stat 783; S Rep No. 91-912, p 22 (1970); HR Rep No. 91-1104, p 48 (1970).

None of the documents constituting the PRA legislative history suggest that those concerned with postal reforms saw any connection between the PES and the provisions of the PRA dealing with labor-management relations. The Senate and House Reports simply note that the proposed bills continue existing law without change and require the Postal Service to conduct a study of the PES. The Court of Appeals referred to the PES as the "linchpin" of the Postal Service, which it may well be; but it stretches the zone-of-interests test too far to say that because of that fact those who a different part of the PRA was designed to benefit may challenge a violation of the PES.

[1e, 7] It would be a substantial extension of our holdings in Clarke, supra, Data Processing, supra, and Investment Co. Institute, supra, to allow the Unions in this case to leapfrog from their asserted protection under the labor-management provisions of the PRA to their claim on the merits under the PES. We decline to make that extension, and hold that the Unions do not have standing to challenge the Postal Service's suspension of the PES to permit private couriers to engage in international remailing. We therefore do not reach the

[498 US 531]

merits of the Unions' claim that the suspension was not in the public interest. The judgment of the Court of Appeals is reversed.

SEPARATE OPINION

Justice **Stevens,** with whom Justice **Marshall** and Justice **Blackmun** join, concurring in the judgment.

There is no ambiguity in the text of 39 USC § 410(a) [39 USCS § 410(a)]. That section of the Postal Reorganization Act provides that the judicial review provisions of the Administrative Procedure Act (APA) do not apply to the exercise of the powers of the Postal Service. See ante, at 522, n 1, 112 L Ed 2d, at 1133. It is therefore not only unnecessary, but also unwise, for the Court to issue an opinion on the entirely hypothetical question whether, if the APA did authorize judicial review of actions of the Postal Service, its employees would have standing to invoke such review to challenge a regulation that may curtail their job opportunities. I therefore do not join the opinion discussing this hypothetical standing question.

Nor do I consider it necessary to decide whether this objection to judicial review may be waived by the Postal Service, because it is surely a matter that we may notice on our own motion.* Faithful adherence to the doctrine of judicial restraint provides a fully adequate justification for deciding this case on the best and narrowest ground available. I would do

so. Accordingly, relying solely on 39 USC § 410(a) [39 USCS § 410(a)], I concur in the Court's judgment that the Unions' challenge must be dismissed.

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* It is at least arguable that the Postal Service did not waive this objection to judicial review. As the Court points out, the Postal Service raised this argument in its brief in opposition to the petition for writ of certiorari. See ante, at 522, 112 L Ed 2d, at 1133. In deciding to review this case, therefore, we were cognizant that an issue antecedent to the standing issue might first have to be resolved. Moreover, although the Postal Service's objection to judicial review was not raised in the lower courts, the Court of Appeals recognized that "the USPS is exempt from the strictures of the Administrative Procedure Act ('APA'), see 39 USC § 410(a) [39 USCS § 410(a)]," American Postal Workers Union, AFL-CIO v United States Postal Service, 228 US App DC 5, 8, 891 F2d 304, 307 (1989), and nevertheless continued to review the actions of the Postal Service, thus implicitly rejecting the contention made by the Government here.

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BUSINESS GUIDES, INC., Petitioner

v

CHROMATIC COMMUNICATIONS ENTERPRISES, INC. and MICHAEL SHIPP

498 US 533, 112 L Ed 2d 1140, 111 S Ct 922

[No. 89-1500]

Argued November 26, 1990. Decided February 26, 1991.

Decision: Federal Civil Procedure Rule 11 held to impose objective standard of reasonable inquiry on any party mandatorily or voluntarily signing pleading, motion, or other paper.

SUMMARY

A corporation which published retail trade directories filed an action through a law firm against one of the publisher's competitors, in which action the corporation (1) claimed copyright infringement, conversion, and unfair competition, and (2) sought a temporary restraining order (TRO). The TRO application was signed by one of the law firm's attorneys and by the corporation's president, and a supplemental affidavit concerning the corporation's claims was signed by the corporation's research director. The Federal District Court for the Northern District of California, denying the TRO application, stayed further proceedings and referred the matter to a magistrate to determine whether sanctions should be imposed under Rule 11 of the Federal Rules of Civil Procedure, which provides that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction. Stating that the standard of conduct under Rule 11 is one of objective reasonableness, the District Court, adopting the magistrate's recommendations, held that (1) the corporation had violated Rule 11 by filing the initial TRO application; and (2) the corporation and the law firm had violated the Rule (a) by failing to conduct a reasonable inquiry once they were put on notice of several inaccuracies in the original application, and (b) in their arguments at two evidentiary hearings before the magistrate (119 FRD 685). Subsequently, the District Court, concluding that

Briefs of Counsel, p 1293, infra.

the corporation's entire lawsuit had no basis in fact, dismissed the action with prejudice and imposed monetary sanctions against the corporation in the amount of the competitor's legal expenses and out-of-pocket costs (121 FRD 402). The Federal Court of Appeals for the Ninth Circuit reversed the District Court's holding that the corporation and law firm had violated Rule 11 at the hearings before the magistrate, but affirmed the District Court's holdings that the corporation was subject to an objective standard of reasonable inquiry concerning the submitted papers, and that the corporation had failed to conduct a reasonable inquiry before signing the initial TRO application and before submitting the research director's supplemental affidavit (892 F2d 802). The Court of Appeals vacated the order of sanctions and remanded to the District Court for reconsideration. After the United States Supreme Court granted certiorari with respect to the Court of Appeals' judgment, the District Court issued an order reaffirming the monetary sanctions and the dismissal of the case.

On certiorari, the United States Supreme Court affirmed. In an opinion by O'Connor, J., joined by Rehnquist, Ch. J., and White, Blackmun, and Souter, JJ., it was held that (1) Rule 11 applies to any party who signs a pleading, motion, or other paper—whether the party's signature is mandatory or voluntary, and whether the party is or is not represented by an attorney—because (a) the Rule's meaning seems plain that a party who signs a paper without first conducting a reasonable inquiry shall be sanctioned, (b) the Rule's language and purpose indicate that the voluntary signature of a represented party is capable of violating the Rule, and (c) the essence of the Rule is that signing denotes merit, and thus the word "party" in the Rule's certification requirement means precisely what it appears to mean; (2) Rule 11 imposes a standard of reasonableness under the circumstances on any signing party, because (a) the Rule states unambiguously that any signer must conduct a reasonable inquiry or face sanctions, and (b) there is no public-policy reason that represented parties should not be held to a reasonable inquiry standard; and (3) the imposition of sanctions under Rule 11 does not violate the Rules Enabling Act (28 USCS § 2072)—which authorizes the United States Supreme Court to prescribe general rules of practice and procedure, but provides that such rules shall not abridge, enlarge, or modify any substantive right—because (a) Rule 11 is not a fee-shifting statute, (b) the Rule does not create a federal common law of malicious prosecution, and (c) the Rule is reasonably necessary to maintain the integrity of the system of federal practice and procedure, with any effect on substantive rights being incidental.

Kennedy, J., joined by Marshall and Stevens, JJ., and joined in pertinent part by Scalia, J., dissented, expressing the view that the judgment of the Court of Appeals should be reversed, because (1) an attorney must violate Rule 11 before a represented party can be sanctioned; (2) it had not been shown in this case that an attorney had signed a paper in violation of Rule 11; and (3) even if an attorney violation of Rule 11 were found, it would be an abuse of discretion to sanction a represented party if the party had acted in good faith.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Courts §§ 538.11, 538.12; Pleading § 7 — Federal Civil Procedure Rule 11 — party's signature — sanctions

1a-1i. Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a

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20 Am Jur 2d, Courts § 86; 32A Am Jur 2d, Federal Practice and Procedure § 1216; 61A Am Jur 2d, Pleading §§ 339-349

27 Federal Procedure, L Ed, Pleadings and Motions §§ 62:108, 62:118-62:118.7

1 Federal Procedural Forms, L Ed, Actions in District Court §§ 1:1165, 1:1166, 1:1173

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Form 643

USCS Court Rules, Federal Rules of Civil Procedure, Rule 11

L Ed Digest, Court §§ 538.10, 538.11, 538.12; Pleading § 7

L Ed Index, Fines, Forfeitures, and Penalties; Frivolous Matters; Pleadings; Rules of Civil Procedure

Index to Annotations, Civil Procedure Rules; Discretion of Court; District Courts; Fines, Penalties, and Forfeitures; Frivolous Actions; Pleadings

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

ANNOTATION REFERENCES

Procedural requirements for imposition of sanctions under Rule 11, Federal Rules of Civil Procedure. 100 ALR Fed 556.

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in antitrust actions. 99 ALR Fed 573.

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in actions for infliction of emotional distress. 98 ALR Fed 442.

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in actions for securities fraud. 97 ALR Fed 107.

Comment note—General principles regarding imposition of sanctions under Rule 11, Federal Rules of Civil Procedure. 95 ALR Fed 107.

paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—applies to any party who signs a pleading, motion, or other paper—whether the party's signature is mandatory or voluntary, and whether the party is or is not represented by an attorney—because (1) based on the relevant part of Rule 11, the Rule's meaning seems plain that a party who signs a paper without first conducting a reasonable inquiry shall be sanctioned; (2) nothing in Rule 11's full text detracts from the plain meaning of the Rule's relevant portion, since the Rule's sentence which provides that a signature certifies that the signer has conducted a reasonable inquiry and is satisfied that the signed paper is well grounded in fact and law refers to the signature of "an attorney or party," thereby making the sentence applicable not only to signatures required by other sentences in the Rule, but also to signatures that are not required but nevertheless present; (3) Rule 11's language and purpose indicate that the voluntary signature of a represented party, no less than the mandatory signature of an attorney, is capable of violating the Rule, since (a) the Rule's sentence which requires that every paper of a party represented by an attorney be signed by at least one attorney of record does not prohibit a represented party from attesting to the merit of documents filed on the party's behalf, and accordingly (b) the Rule's sentence which provides that the signature of an attorney or party on a paper constitutes the signer's certification that the paper is warranted by existing law declares that the signature of a party conveys precisely the same message as that of an attorney; (4) the natural meaning of the language "attorney or party" in Rule 11 is that any party who signs a paper, regardless of whether the party is required to do so, is subject to the certification standard of the Rule, since, had the Advisory Committee responsible for the Rule's 1983 amendment intended to limit the certification requirement's application to parties proceeding pro se, the committee would have said so, given that elsewhere in the Rule, the committee distinguished between represented and unrepresented parties; and (5) the most natural reading of Rule 11 is also a sensible one, since the essence of the Rule is that signing denotes merit, and thus the word "party" in the Rule's certification requirement means precisely what it appears to mean. (Kennedy, Marshall, Stevens, and Scalia, JJ., dissented from this holding.)

Courts §§ 538.11, 538.12; Pleading § 7 — Federal Civil Procedure Rule 11 — signature — certification standard

2a-2f. Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—imposes, under the Rule's "reasonable inquiry" requirement, on any party who signs a pleading, motion, or other paper—whether the party's signature is required by the Rule or is provided voluntarily, and whether the party is or is not represented by an attorney—a standard of reasonableness under the circumstances, because (1) Rule 11 speaks of attorneys and parties in a single breath and states unambiguously that any signer must conduct a reasonable inquiry or face sanctions, and (2) there is no public policy reason that represented parties should not be held to a reasonable inquiry standard, since (a) quite often it is the client, not the attorney, who is better positioned to investigate the facts supporting a paper or pleading, (b) although represented parties may often be less able than attorneys to investigate the legal basis for a paper or pleading, what is objectively reasonable for a client may differ from what is objectively reasonable for an attorney, and (c) represented parties should not be given the benefit of a subjective bad-faith standard under the Rule, whereas pro se litigants are held to a higher objective standard; thus a Federal District Court is authorized to impose sanctions, under Rule 11, against a publishing corporation which, seeking a temporary restraining order (TRO) against a competitor, has filed an action through a law firm against the competitor, where the court finds that the corporation failed to conduct a reasonable inquiry before the TRO application—which was signed by one of the firm's attorneys and by the corporation's president—was signed and a supplemental affidavit concerning the action and signed by the corporation's research director was submitted to the court. (Kennedy, Marshall, Stevens, and Scalia, JJ., dissented from this holding.)

Courts § 538.11; Statutes § 83 — Federal Rules of Civil Procedure — absence of ambiguity

3. The United States Supreme Court gives the Federal Rules of Civil Procedure their plain meaning, and as with a statute, the court's inquiry is complete if the court finds the text of a Rule to be clear and unambiguous.

Pleading § 7 — signature

4. In setting up a means by which litigants certify to the court, by signature, that any papers filed are well founded, Rule 11 of the Federal Rules of Civil Procedure is aimed at curbing abuses of the judicial system.

Courts § 538.11; Pleading § 7 — Federal Civil Procedure Rule 11 — signature

5. The first sentence of Rule 11 of the Federal Rules of Civil Procedure —which sentence provides, with respect to papers filed with a Federal District Court, that every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record—indicates that a party who is represented by counsel is not itself required by Rule 11 to sign most papers or pleadings; generally, only the signature of the attorney is mandated by the Rule.

Courts § 538.11; Injunction § 130; Pleading § 7 — Federal Civil Procedure Rule 11 — temporary restraining order — signature of party

6. Because Rule 65(b) of the Federal Rules of Civil Procedure—which describes the circumstances under which a temporary restraining order

(TRO) may be granted without notice to the adverse party or that party's attorney if it appears from specific facts shown by affidavit or by verified complaint that irreparable injury will result to the applicant before the adverse party or that party's attorney can be heard—provides specifically that a TRO application must be accompanied by an affidavit or verified complaint that sets forth the facts showing that irreparable injury will result, a TRO application is one of the situations provided for in Rule 11 of the Federal Rules of Civil Procedure—in the sentence stating that, except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit—in which a party's verification or signed affidavit is mandatory.

Corporations § 89 — mode of action

7. A corporate entity cannot itself sign anything; it can act only through its agents.

Appeal § 1118 — argument not raised below

8. On certiorari to determine whether Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—applies to a corporation whose president and research director have signed papers filed in a District Court by a law firm representing the corporation, the United States Supreme Court need not resolve the question whether, because a corporate entity cannot itself sign a document, a legal counsel's corporate client does not fall within the scope of Rule 11, where this argument has not been raised by the corporation in the courts below.

Courts § 538.11 — Federal Civil Procedure Rule 11 — construction

9. In determining whether Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—imposes an objective standard of reasonable inquiry on represented parties who sign pleadings, motions, or other papers, the task of the United States Supreme Court is not to decide what the Rule should be, but rather to determine what it is; once the Supreme Court concludes that Rule 11 speaks to the matter at issue, the court's inquiry is complete; thus, where the Advisory Committee responsible for the Rule's 1983 amendment deleted the Rule's subjective standard and replaced it with a "reasonable inquiry" standard, even if the Supreme Court were convinced that a subjective bad-faith standard would more effectively promote the goals of Rule 11, the court would not be free to implement this standard outside the rule-making process, because the task of the Supreme Court is to apply the Rule's text, not to improve upon it.

Courts § 538.11; Pleading § 7 — Federal Civil Procedure Rule 11 — signature — reasonable inquiry

10. Under Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—the legal inquiry that can reasonably be expected from a signing party may vary from case to case, because the Rule's certification standard, while more stringent than the good-faith formula existing under the Rule before it was amended in 1983, (1) is not inflexible, and (2) is one of reasonableness under the circumstances.

Courts §§ 538.10, 538.11; Pleading § 7 — Federal Civil Procedure Rule 11 — sanctions — validity under Rules Enabling Act

11a, 11b. The imposition of sanctions under Rule 11 of the Federal Rules of Civil Procedure—which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropriate sanction—against a represented party that did not act in bad faith does not violate the Rules Enabling Act (28 USCS § 2072)—which authorizes the United States Supreme Court to prescribe general rules of practice and procedure, but provides that such rules shall not abridge, enlarge, or modify any substantive right—because (1) Rule 11 is not a fee-shifting statute, since (a) Rule 11 sanctions are not tied to the outcome of litigation and shift only the cost of a discrete event rather than the entire cost of litigation, and (b) a movant under Rule 11 has no entitlement to fees or any other sanction, where the Rule calls only for an appropriate sanction and does not mandate attorney's fees; (2) Rule 11 does not create a federal common law of malicious prosecution, since the Rule's objective is not to reward parties who are victimized by litigation, but to deter baseless filings and curb abuses; and (3) although imposing monetary sanctions on parties that violate Rule 11 may confer a benefit on other litigants, the Rule is reasonably necessary to maintain the integrity of the system of federal practice and procedure, and any effect on substantive rights is incidental.

Courts §§ 537.5, 538.10 — Federal Civil Procedure Rule 11 — validity under Rules Enabling Act — rule-making process — congressional participation

12. A Rules Enabling Act (28 USCS § 2072) challenge to Rule 11 of the Federal Rules of Civil Procedure —which provides in relevant part that (1) the signature of an attorney or party on a paper filed in a Federal District Court constitutes the signer's certification, based on a reasonable inquiry, that the paper is well grounded in fact, and (2) if a paper is signed in violation of this provision, the District Court shall impose upon the signer an appropri-

ate sanction—can succeed only if the Advisory Committee responsible for Rule 11, the United States Supreme Court, and Congress have erred in their prima facie judgment that the Rule transgresses neither the terms of the Rules Enabling Act —which authorizes the Supreme Court to prescribe general rules of practice and procedure, but provides that such rules shall not abridge, enlarge, or modify any substantive right—nor constitutional restrictions, because (1) Congress, although it does not enact the Federal Rules of Civil Procedure, participates in the rule-making process, and (2) the Rules do not go into effect until Congress has had at least 7 months to look them over.

SYLLABUS BY REPORTER OF DECISIONS

Federal Rule of Civil Procedure 11 provides, in relevant part, that "[t]he signature of an attorney *or party* constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper" and "to the best of the signer's knowledge, information, and belief *formed after reasonable inquiry* it is well grounded in fact," and that a court shall impose an appropriate sanction *"upon the person who signed"* a pleading, motion, or other paper in violation of the Rule. (Emphasis added). After finding that there was no basis in fact for the copyright infringement action and request for a temporary restraining order (TRO) filed by petitioner, through its counsel, against respondents, the District Court imposed Rule 11 monetary sanctions against petitioner on the ground that it had failed to make a reasonable inquiry before its president signed the initial TRO application and its research director signed a supplemental affidavit. The Court of Appeals affirmed.

Held:

1. Rule 11 applies to represented parties. The Rule's relevant portion unambiguously states that a party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned, and there is nothing in the Rule's full text that detracts from this plain meaning. The reading urged by petitioner—that since the Rule does not require a represented party to sign most pleadings, a party who chooses to sign need not comply with the certification procedure—is inconsistent with the Rule's language and purpose. That a represented party may not be required to sign a pleading does not prohibit that party from attesting to the merit of a document filed on its behalf, and the signature of "an attorney *or party"* conveys the same message of certification. Thus, whether it is required or voluntary, a represented party's signature is capable of violating the Rule. A represented party's signature would fall outside the Rule's scope only if the phrase "attorney or party" were given the unnatural reading "attorney or *unrepresented* party." Had the Advisory Committee responsible for the Rule intended to limit the certification requirement's application to pro se parties, it would have expressly distinguished between represented and unrepresented parties, which it did elsewhere in the Rule, rather than lumping the two types together. Including all parties is also an eminently sensible reading of the Rule, since the Rule's essence is that signing denotes merit. Pavelic & LeFlore v Marvel Entertainment Group, 493

US 120, 107 L Ed 2d 438, 110 S Ct 456, which held that the Rule contemplates sanctions against an attorney signer rather than the law firm of which he or she is a member, is entirely consistent with the result here that a represented party who signs his or her name bears a personal, nondelegable responsibility to certify the document's truth and reasonableness. The issue whether the signatures of petitioner's agents can be treated as its signature need not be resolved here, since it was not raised below.

2. The certification standard for a party is an objective one of reasonableness under the circumstances. The Rule speaks of attorneys and parties in a single breath and unambiguously states that the signer must conduct a "reasonable inquiry" or face sanctions. In amending the Rule in 1983, the Advisory Committee specifically deleted the existing subjective standard and replaced it with an objective one at the same time that it amended the Rule to cover parties. There is no public policy reason not to hold represented parties to a reasonable inquiry standard. The client is often better positioned to investigate the facts supporting a pleading or paper, and the fact that a represented party is less able to investigate the legal basis for a paper or pleading means only that what is objectively reasonable for a client may differ from what is objectively reasonable for an attorney.

3. The imposition of sanctions against a represented party that did not act in bad faith does not violate the Rules Enabling Act. Rule 11 is not a fee-shifting statute. The sanctions are not designed to reallocate the burdens of litigation, since they are tied not to the litigation's outcome, but to the issue whether a specific filing was well founded; they shift only the cost of a discrete event rather than the litigation's entire cost; and the Rule calls only for an appropriate sanction but does not mandate attorney's fees. Alyeska Pipeline Service Co. v Wilderness Society, 421 US 240, 247, 258-259, 44 L Ed 2d 141, 95 S Ct 1612, distinguished. Also without merit is petitioner's argument that the Rule creates a federal common law of malicious prosecution. The Rule's objective is not to reward parties who are victimized by litigation; it is to deter baseless filings and curb abuses. While the Rule may confer a benefit on other litigants, the Rules Enabling Act is not violated by incidental effects on substantive rights where the Rule is reasonably necessary to maintain the integrity of the federal practice and procedure system.

892 F2d 802, affirmed.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C.J., and White, Blackmun, and Souter, JJ., joined. Kennedy, J., filed a dissenting opinion, in which Marshall and Stevens, JJ., joined, and in Parts I, III, and IV of which Scalia, J., joined.

APPEARANCES OF COUNSEL

Stephen V. Bomse argued the cause for petitioner.

Neil L. Shapiro argued the cause for respondents.

Briefs of Counsel, p 1293, infra.

Justice **O'Connor** delivered the opinion of the Court.

[1a, 2a] In this case we decide whether Rule 11 of the Federal Rules of Civil Procedure imposes an objective standard of reasonable inquiry on represented parties who sign pleadings, motions, or other papers.

I

Business Guides, Inc., a subsidiary of a leading publisher of trade magazines and journals, publishes directories for 18 specialized areas of retail trade. In an effort to protect its directories against copying, Business Guides deliberately plants in them bits of false information, known as "seeds." Some seeds consist of minor alterations in otherwise accurate listings—transposed numbers in an address or zip code, or a misspelled name—while others take the form of wholly fictitious listings describing nonexistent businesses. Business Guides considers the presence of seeds in a competitor's directory to be evidence of copyright infringement.*

On October 31, 1986, Business Guides, through its counsel Finley, Kumble, Wagner, Heine, Unterberg, Manley, Myerson, and Casey (Finley, Kumble), filed an action in the United States District Court for the Northern District of

California against Chromatic Communications Enterprises, Inc., claiming copyright infringement, conversion, and unfair competition, and seeking a temporary restraining order (TRO). The TRO application was signed by a Finley, Kumble attorney and by Business Guides' president on behalf of the corporation. Business Guides submitted under seal affidavits in support of the application. These affidavits charged Chromatic with copying, as evidenced by the presence of 10 seeds in Chromatic's directory. One affidavit, that of sales representative Victoria Burdick, identified the 10 listings in Business Guides' directory that had allegedly been copied, but did not pinpoint the seed in each listing.

A hearing on the TRO was scheduled for November 7, 1986. Three days before the hearing, the District Judge's law clerk phoned Finley, Kumble and asked it to specify what was incorrect about each listing. Finley, Kumble relayed this request to Business Guides' Director of Research, Michael Lambe. This was apparently the first time the law firm asked its client for details about the 10 seeds. Based on Lambe's response, Finley, Kumble informed the court that Business Guides was retracting its claims of copying as to three of the seeds. The District Court considered this suspicious and so conducted its own investigation into the allegations of copying. The District Judge's law clerk spent one hour telephoning the businesses named in the "seeded" listings, only to discover that 9 of the 10 listings contained no incorrect information.

Unaware of the District Court's discovery, Finley, Kumble prepared a supplemental affidavit of Michael Lambe, identifying seven listings in

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* Given the posture of this case, we have no occasion to consider whether the information contained in such a directory would actually be copyrightable. See Feist Publications, Inc. v Rural Telephone Serv. Co. cert granted, post, p 808, 112 L Ed 2d 17, 111 S Ct 40.

Chromatic's directory and explaining precisely what part of each listing supposedly contained seeded information. Lambe signed this affidavit on the morning of the November 7 hearing. Before doing so, however, Lambe crossed out reference to a fourth seed that he had determined did not in fact reflect any incorrect information but which Finley, Kumble had not retracted.

[498 US 537]

At the hearing, the District Court, based on its discovery that 9 of the original 10 listings contained no incorrect information, denied the application for a TRO. More importantly, the judge stayed further proceedings and referred the matter to a Magistrate to determine whether Rule 11 sanctions should be imposed. The Magistrate conducted two evidentiary hearings, at which he instructed Business Guides and Finley, Kumble to explain why 9 of its 10 charges of copying were meritless. Both claimed it was a coincidence. Doubting the good faith of these representations, the Magistrate recommended that both the law firm and the client be sanctioned. See App to Pet for Cert 64a-75a.

Later, claiming to have uncovered the true source of the errors, the parties asked for and received a third hearing. Business Guides explained that in compiling its "master seed list," it had departed from its normal methodology. Usually, letters and numbers were transposed deliberately and recorded on the seed list before the directory was published. In this case, the company had compiled the master seed list *after* publication by looking for unintended typographical errors in the directory. To locate such errors, sales representative Victoria Burdick had compared the final version of the directory against initial questionnaires that had been submitted to Business Guides by businesses that wanted to be listed. When Burdick discovered a disparity between a questionnaire and the final directory, she included it on the seed list. She assumed, without investigating, that the information on the questionnaires was accurate. As it turned out, the questionnaires themselves sometimes contained transposed numbers or misspelled names, which other employees had corrected when proofreading the directory prior to publication. Consequently, many of the seeds appearing on the master list contained no false information. The presence of identical listings in a competitor's directory thus would not indicate copying, but rather accurate research.

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The Magistrate accepted this explanation, but determined that sanctions were nonetheless appropriate. Id., at 48a. First, he found that Business Guides, in filing the initial TRO application, had "failed to conduct a proper inquiry, resulting in the presentation of unreasonable and false information to the court." Id., at 53a. The Magistrate did not recommend that Finley, Kumble be sanctioned for the initial application, however, as the firm had been led to believe that there was an urgent need to act quickly and thus relied on the information provided by its sophisticated corporate client. Id., at 54a-55a. Next, the Magistrate recommended that both Business Guides and Finley, Kumble be sanctioned for having failed to inquire into the accuracy of the remaining seeds following Michael Lambe's discovery, based on only a few minutes of investigation, that 3 of the 10 were invalid. Id., at 55a-56a. Finally, the

Magistrate recommended that both the law firm and its client be sanctioned for their conduct at the first two evidentiary hearings. Instead of investigating the cause of the errors in the seed list, Business Guides and Finley, Kumble had relied on a "coincidence" defense. Id., at 51a. The Magistrate determined that "[n]o reasonable person would have been satisfied with these explanations. . . . Finley, Kumble and Business Guides did not need this court to point out the blatant errors in the logic of their representations." Id., at 59a.

The District Court agreed with the Magistrate, stating: "The standard of conduct under Rule 11 is one of objective reasonableness. Applying this standard to the circumstances of this case, it is clear that both Business Guides and Finley Kumble have violated the Rule." 119 FRD 685, 688-689 (ND Cal 1988). The court reiterated the Magistrate's conclusion that: (1) Business Guides violated Rule 11 by filing the initial TRO application; (2) Business Guides and Finley, Kumble violated the Rule by failing to conduct a reasonable inquiry once they were put on notice of several inaccuracies; and (3) Business Guides and Finley, Kumble violated

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the Rule in their arguments to the Magistrate at the first two evidentiary hearings. Id., at 689. Rather than impose sanctions at that time, the District Court unsealed the proceedings and invited Chromatic to file a motion requesting particular sanctions. Id., at 690.

Chromatic brought a motion for sanctions against both Business Guides and Finley, Kumble. It later moved to withdraw the motion with respect to Finley, Kumble, after learning that the law firm had recently dissolved and that all proceedings against the firm were stayed under § 362 of the Bankruptcy Code. 121 FRD 402, 403 (ND Cal 1988). The District Court accepted this withdrawal and issued its ruling without prejudice to Chromatic's right to pursue sanctions against Finley, Kumble at a later date. Ibid.

Before ruling on the motion for sanctions against Business Guides, the District Court made additional factfindings. It observed that of the 10 seeds that had originally been alleged to be present in Chromatic's directory, only one actually contained false information. Ibid. This seed was a wholly fictitious listing for a company that did not exist. Chromatic denied that it had copied this listing from Business Guides' directory; it offered an alternative explanation—that Business Guides had "planted" the fake listing in Chromatic's directory. A Business Guides employee had requested a copy of Chromatic's directory, filled out a questionnaire providing information about the nonexistent company, and mailed this questionnaire to Chromatic intending that the company publish the false listing in its directory. Id., at 403-404. Business Guides did not deny the truth of these charges, and the District Court found that petitioner's silence amounted to a "tacit admission." Id., at 404. In light of this finding, the court had no choice but to conclude: "Business Guides' entire lawsuit has no basis in fact." "[T]here was, and is, no evidence of copyright infringement." Ibid.

The court then ruled on Chromatic's motion for sanctions. Citing "the rather remarkable circumstances of this case, and

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the serious consequences of Business Guides' improper conduct," it dismissed the action with prejudice. Id., at 406. Additionally, it imposed $13,865.66 in sanctions against Business Guides, the amount of Chromatic's legal expenses and out-of-pocket costs. Id., at 405.

The Court of Appeals for the Ninth Circuit affirmed the District Court's holdings that Business Guides was subject to an objective standard of reasonable inquiry into the factual basis of papers submitted to the court, and that Business Guides had failed to conduct a reasonable inquiry before (1) signing the initial TRO application, and (2) submitting Michael Lambe's supplemental declaration. 892 F2d 802, 811 (1989). The court relied on the plain language of Rule 11, which "draws no distinction between the state of mind of attorneys and parties. . . . On the contrary, the rule, by requiring any 'signer' of a paper (attorney *or* party) to conduct a 'reasonable inquiry,' would appear to prescribe similar standards for attorneys and represented parties." Id., at 809 (emphasis original). The Court of Appeals reversed, however, the District Court's holding that oral representations and testimony before the Magistrate violated Rule 11. Id., at 813. Because it reversed one of the three bases on which Business Guides had been sanctioned, the Court of Appeals vacated the order of sanctions and remanded to the District Court for reconsideration. Id., at 813-814. We granted certiorari to determine whether the Court of Appeals properly held Business Guides to an objective standard of reasonable inquiry. 497 US 1002, 111 L Ed 2d 746, 110 S Ct 3235 (1990). Subsequently, the District Court issued an order reaffirming the dismissal and monetary sanctions. App to Pet for Cert 1a-2a.

II

A

[1b, 3] "We give the Federal Rules of Civil Procedure their plain meaning." Pavelic & LeFlore v Marvel Entertainment Group, 493 US 120, 123, 107 L Ed 2d 438, 110 S Ct 456 (1989). As with a statute, our inquiry

is complete if we find the text of the Rule to be clear and unambiguous. Rule 11 provides in relevant part: "The signature of an attorney *or party* constitutes a certificate by the signer that . . . to the best of the signer's knowledge, information, and belief *formed after reasonable inquiry* it is well grounded in fact . . . . If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose *upon the person who signed it* . . . an appropriate sanction" (emphasis added). Thus viewed, the meaning of the Rule seems plain: A party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned. Business Guides argues, however, that the Rule's meaning is not so clear when one reads the full text. Accordingly, we reproduce below the full text of Rule 11, adding bracketed numbers before each sentence to clarify the discussion that follows:

> "[1] Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. [2] A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper

and state the party's address. [3] Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. [4] The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. [5] The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such

as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [6] If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. [7] If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

[1c, 4] We find nothing in the full text of the Rule that detracts from the plain meaning of the relevant portion quoted initially. Rule 11 is "aimed at curbing abuses of the judicial system." Cooter & Gell v Hartmarx Corp., 496 US 384, 397, 110 L Ed 2d 359, 110 S Ct 2447 (1990). To this end, it sets up a means by which litigants certify to the court, by signature, that any papers filed are well founded. The first three sentences of the Rule explain in what instances a signature is mandatory. Sentence [1] states that where a party is represented by counsel, the party's attorney must sign any motion, pleading, or other paper filed with the court. Sentence [2] provides that where a party is proceeding pro se, the unrepresented party must sign the documents. Sentence [3] acknowledges that in some situations represented parties are required by rule or statute to verify pleadings or sign affidavits. Sentence [4] explains that certification by signature replaces some older forms of oath and attestation.

[1d] The heart of Rule 11 is sentence [5], which explains in detail the message conveyed by the signing of a document. A signature certifies to the court that the signer has read the document, has conducted a reasonable inquiry into the facts and the law and is satisfied that the document is well-grounded in both, and is acting without any improper motive.

See 5A C. Wright & A. Mil;ler, Federal Practice and Procedure § 1335, pp 57-58 (2d ed 1990) (hereinafter Wright & Miller). This sentence, by its terms, governs any signature of "an attorney or party," thereby making it applicable not only to signatures required by sentences [1], [2], and [3], but also to signatures that are not required but nevertheless present. "The certification requirement now mandates that *all* signers consider their behavior in terms of the duty they owe to the court system to conserve its resources and avoid unnecessary proceedings." Id., at § 1331, 21 (emphasis added). The final two sentences describe the means by which the Rule is enforced. Sentence [6] dictates that where a required signature is missing and the omission is not corrected promptly, the document will be stricken. Sentence [7] requires that sanctions be imposed where a signature is present but fails to satisfy the certification standard.

[5] Business Guides proposes an alternative interpretation of the text. As mentioned, sentence [1] indicates that a party who is represented by counsel is not itself required to sign most papers or pleadings; generally, only the signature of the attorney is mandated. Business Guides concludes from this that a represented party may, if it wishes, sign a document, but that this signature need not comply with the certification standard described in sentence [5]. Because a client's signature is not normally required by Rule 11, the occasional presence of one cannot run afoul of the Rule. In short, Business Guides maintains that a represented party is free to sign frivolous or vexatious documents with impunity because its signature on a document carries with it no additional risk of sanctions.

[1e, 6] This reading is inconsistent with both the language and the purpose of Rule 11. As an initial matter, it is not relevant that represented parties rarely sign filed documents, because Business Guides did sign in this case. Indeed, it was required to do so. Rule 65(b) of the Federal Rules of Civil Procedure provides specifically that a TRO application must be

accompanied by an affidavit or verified complaint that sets forth the facts. A TRO application is thus one of the situations provided for in sentence [3], where a party's verification or signed affidavit is mandatory. Even if Business Guides had not been required to sign the TRO application but did so voluntarily, the language of Rule 11 would still require that the signature satisfy the certification requirement. Sentence [1] may not require a represented party to sign papers and pleadings, but neither does it prohibit a represented party from attesting to the merit of documents filed on its behalf. "When a party is represented by counsel, it is unnecessary, but not improper, for the represented party to sign as well." Wright & Miller § 1333, at 47. Accordingly, sentence [5] declares that the signature of a party conveys precisely the same message as that of an attorney: "The signature of an attorney *or party* constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that . . . it is well grounded in fact and is warranted by existing law." (Emphasis added.) It seems plain that the voluntary signature of a represented party, no less than the mandatory signature of an attorney, is capable of violating the Rule.

[1f] The only way that Business Guides can avoid having to satisfy the certification standard is if we read "attorney or party" as used in sentence [5] to mean "attorney or *unrepresented* party." Only then would the signature of a represented party fall outside the scope of the Rule. We decline to adopt this unnatural reading, as there is no indication that this is what the Advisory

Committee intended. Just the opposite is true. Prior to its amendment in 1983, sentence [5] referred solely to "[t]he signature of an attorney" on a "pleading." The 1983 amendments deliberately expanded the coverage of the Rule. Wright & Miller § 1331, at 21. Sentence [5] was amended to refer broadly to "[t]he signature of an attorney *or party*" on a "pleading, motion, *or other paper*" (emphasis added). Represented parties, despite having counsel,

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routinely sign certain papers—declarations, affidavits, and the like—during the course of litigation. Business Guides, for example, submitted to the District Court no fewer than five signed papers in support of its TRO application. The amended language of sentence [5] leaves little room for doubt that the signatures of the "party" on these "other papers" must satisfy the certification requirement.

Had the Advisory Committee intended to limit the application of the certification standard to parties proceeding pro se, it would surely have said so. Elsewhere in the text, the Committee demonstrated its ability to distinguish between represented and unrepresented parties. Sentence [1] refers specifically to "a party represented by an attorney," while sentence [2] applies to "[a] party who is *not* represented by an attorney" (emphasis added). Sentence [5], however, draws no such distinction; it lumps together the two types of parties. By using the more expansive term "party," the Committee called for more expansive coverage. The natural reading of this language is that *any* party who signs a document, whether or not the party was required to do so, is subject to the certification standard of Rule 11.

Leading scholars are in accord. Professors James Wm. Moore and Jo Desha Lucas, authors of Moore's Federal Practice, state: "The current Rule places an affirmative duty on the attorney or party to investigate the facts and the law prior to the subscription and submission of any pleading, motion or paper. . . . The rule applies to attorneys, parties represented by attorneys, and parties who appear pro se." 2A J. Moore & J. Lucas, Moore's Federal Practice ¶ 11.02[3], pp 11-15 to 11-17, (2d ed 1990) (footnotes omitted). Professors Charles Alan Wright and Arthur R. Miller describe in their treatise on Federal Practice and Procedure "seven major alterations" of Rule 11 practice occasioned by the 1983 amendments, one of which is that "the range of people covered by the certification requirement . . . has been expanded. Now, *all* signers, not just attorneys, are on notice

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that their signature constitutes a certification as to the contents of the document." Wright & Miller § 1331, at 21 (emphasis added). "The expansion of the scope of the certification requirement to include non-attorney signers was accomplished by changing 'signature of an attorney' in the fifth sentence of the rule to 'signature of an attorney or party.' " Id., at 21-22, n 54.

In addition to being the most natural reading, it is an eminently sensible one. The essence of Rule 11 is that signing is no longer a meaningless act; it denotes merit. A signature sends a message to the district court that this document is to be taken seriously. This case is illustrative. Business Guides sought a TRO on the strength of an initial application accompanied by five signed statements to the effect that Chromatic was pirating its directory. Because these documents were filed under seal, the District Court had to determine the credibility of the allegations without the benefit of hearing the other side's view. The court might plausibly have attached some incremental significance to the fact that Business Guides itself risked being sanctioned if the factual allegations contained in these signed statements proved to be baseless. Business Guides asks that we construe Rule 11 in a way that would render the signatures on these statements risk free. Because this construction is at odds with the Rule's general admonition that signing denotes merit, we are loath to do so absent a compelling indication in the text that the Advisory Committee intended such a result. Because we find no such indication, compelling or otherwise, we conclude that the word "party" in sentence [5] means precisely what it appears to mean.

The dissent contends that this conclusion is inconsistent with our decision last Term in Pavelic & Le Flore. See post, at 556, 562-564, 112 L Ed 2d, at 1162, 1166-1167. Just the opposite is true; our decision today follows naturally from Pavelic & LeFlore. We held in Pavelic & LeFlore that Rule 11 contemplates sanctions against the particular individual who signs his or her name not against

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the law firm of which that individual is a member, because "the purpose of Rule 11 as a whole is to bring home to the individual signer his personal, nondelegable responsibility . . . to validate the truth and legal reasonableness of the papers filed." 493 US, at 126, 107 L Ed 2d 438, 110 S Ct 456. This is entirely consistent with our decision here that a represented party who signs his or her name bears a personal, nondelegable responsibility to certify the truth and reasonableness of the document. The dissent agrees that a party proceeding without the benefit of legal assistance bears this responsibility, but insists that a party represented by counsel—even one whose signature is mandatory—is absolved from any duty to vouch for the truth of papers he or she signs because he or she has delegated this responsibility to counsel. See post, at 556, 112 L Ed 2d, at 1162.

The dissent's dichotomy between represented and unrepresented parties is particularly troubling given that it has no basis in the text of the Rule. Sentence [5] refers to "[t]he signature of an attorney *or party*" (emphasis added). We emphasized in Pavelic & LeFlore that this Court will not reject the natural reading of a rule or statute in favor of a less plausible reading, even one that seems to us to achieve a better result. 493 US, at 126-127, 107 L Ed 2d 438, 110 S Ct 456. Yet Justice Kennedy proposes that we construe "party" to mean "*unrepresented* party"—notwithstanding the Advisory Committee's ability, demonstrated only three sentences earlier, to distinguish between represented and unrepresented parties—because he thinks it unwise to punish clients. See post, at 556-558, 112 L Ed 2d, at 1162-1164.

[1g, 7, 8] The dissent also criticizes us for treating the signatures of Business Guides' president and director of research as signatures of the company. Justice Kennedy suggests that this is "in square conflict" with our holding in Pavelic & LeFlore that " 'the person who signed' " was the individual attorney, not the law firm. Post, at 563, 112 L Ed 2d, at 1166. The dissent overlooks an important distinction. In Pavelic & LeFlore, we relied in part on Rule 11's unambiguous statement that papers must be signed by an attorney "in the attorney's individual name."

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493 US, at 125, 107 L Ed 2d 438, 110 S Ct 456 (emphasis omitted). A corporate entity, of course, cannot itself sign anything; it can act only through its agents. It would be anomalous to determine that an individual who is represented by counsel falls within the scope of Rule 11, but that a corporate client does not because it cannot itself sign a document. In any event, the question need not be resolved definitely here; Business Guides concedes that it did not raise this argument in the courts below. Brief for Petitioner 35, n 38.

B

[2b] Having concluded that Rule 11 applies to represented parties, we must next determine whether the certification standard for a party is the same as that for an attorney. The plain language of the Rule again provides the answer. It speaks of attorneys and parties in a single breath and applies to them a single standard: "The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." As the Court of Appeals correctly observed: "[T]he rule draws no distinction between the state of mind of attorneys and parties." 892 F2d, at 809. Rather, it states unambiguously that any signer must conduct a "reasonable inquiry" or face sanctions.

[9] Business Guides devotes much of its brief to arguing that subjective bad faith, not failure to conduct a reasonable inquiry, should be the touchstone for sanctions on represented parties. It points with approval to Rule 56(g) of the Federal Rules of Civil Procedure, which appears to subject affidavits in the summary judgment context to a subjective good faith standard. This argument is misdirected, as this Court is not

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acting on a clean slate; our task is not to decide what the rule should be, but rather to determine what it is. Once we conclude that Rule 11 speaks to the matter at issue, our inquiry is complete. See Pavelic & LeFlore, supra, at 126, 107 L Ed 2d 438, 110 S Ct 456. As originally drafted, Rule 11 set out a subjective standard, but the Advisory Committee determined that this standard was not working. See Cooter & Gell, 496 US, at 392-393, 110 L Ed 2d 359, 110 S Ct 2447. Accordingly, the Committee deleted the subjective standard at the same time that it expanded the rule to cover parties. See Wright & Miller at § 1335, 58-60. That the Advisory Committee did not also amend Rule 56(g) hardly matters. Rather than fashion a standard specific to summary judgment proceedings, the Committee chose to amend Rule 11, thereby establishing a more stringent standard for all affidavits and other papers. Even if we were convinced that a subjective bad faith standard would more effectively promote the goals of Rule 11, we would not be free to implement this standard outside of the rulemaking process. "Our task is to apply the text, not to improve upon it." Pavelic & LeFlore, supra, at 126, 107 L Ed 2d 438, 110 S Ct 456.

[2c] Nor are we convinced that, as a policy matter, represented parties should not be held to a reasonable inquiry standard. Quite often it is the client, not the attorney, who is better positioned to investigate the facts supporting a paper or pleading. This case is a perfect example. Business Guides brought the matter to Finley, Kumble and requested the law firm to obtain an immediate injunction against Chromatic. Given the apparent urgency, the District Court reasoned that the firm could not be blamed for relying on the factual representations of its experienced corporate client. Rather, the blame—and the sanctions—properly fell on Business Guides:

> "This case illustrates well the dangers of a party's failure to act reasonably in commencing litigation. Here Business Guides, a sophisticated corporate entity, hired a large, powerful and nationally known law firm to file suit against a competitor for copyright infringement.
>
> **[498 US 550]**
>
> This competitor happened to be a one-man company operating out of a garage in California. Two years later, after extensive time and effort on the part of the court, the various counsel for Busdiness Guides, as well as various counsel for Business Guides' counsel, it turns out there was no evidence of infringement. The entire lawsuit was a mistake. In the meantime the objects of this lawsuit have spent thousands of dollars of attorney's fees and have suffered potentially irreparable damage to their business. This entire scenario could have been avoided if, prior to filing the suit, Business Guides simply had spent an hour, like the court's law clerk did, and checked the accuracy of the purported seeds." 121 FRD, at 405.

Where a represented party appends its signature to a document that a reasonable inquiry into the facts would have revealed to be without merit, we see no reason why a District Court should be powerless to sanction the party in addition to, or instead of, the attorney. See Wright & Miller § 1336, at 104. A contrary rule would establish a safe harbor such that sanctions could not be imposed where an attorney, pressed to act quickly, reasonably relies on a client's careless misrepresentations.

[2d, 10] Of course, represented parties may often be less able to investigate the legal basis for a paper or pleading. But this is not invariably the case. Many corporate clients, for example, have in-house counsel who are fully competent to make the necessary inquiry. Other party litigants may have a great deal of practical litigation experience. Indeed, Business Guides itself is no stranger to the courts; it is a sophisticated corporate entity that has been prosecuting copyright infringement actions since 1948. App 105-106. The most that can be said is that the legal inquiry that can reasonably be expected from a party may vary from case to case. Put another way, "what is objectively reasonable for a client may differ from what is objectively reasonable for an attorney." [498 US 551] 892 F2d, at 810. The Advisory Committee was well aware of this when it amended Rule 11. Thus, the certification standard, while "more stringent than the original good-faith formula," is not inflexible. "The standard is one of reasonableness *under the circumstances"* (emphasis added). Advisory Committee's Note to Fed Rule Civ Proc 11, 28 USC App, p 576 [USCS Court Rules, Fed Rules of Civ Proc, Notes following Rule 11]. This formulation "has been embraced, in all thirteen circuits." Wright & Miller § 1335, at 61-62. This is a far more sensible rule than that proposed by Business Guides, which would hold parties proceeding pro se to an objective standard, while applying a lesser subjective standard to represented parties. As noted by the Court of Appeals, "We fail to see why represented parties should be given the benefit of a subjective bad faith standard whereas pro se litigants, who do not enjoy the aid of counsel, are held to a higher objective standard." 892 F2d, at 811.

[1h, 2e] Giving the text its plain meaning, we hold that it imposes on any party who signs a pleading, motion, or other paper—whether the party's signature is required by the Rule or is provided voluntarily—an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing, and that the applicable standard is one of reasonableness under the circumstances.

III

[11a] One issue remains: Business Guides asserts that imposing sanctions against a represented party that did not act in bad faith violates the Rules Enabling Act, 28 USC § 2072 [28 USCS § 2072]. The Act authorizes the Court "to prescribe general rules of practice and procedure," but provides that such rules "shall not abridge, enlarge, or modify any substantive right." Business Guides argues that Rule 11, to the extent that it imposes on represented parties an objective standard of reasonableness, exceeds the limits of the Court's power in two ways: (1) It authorizes fee shifting in a manner not approved by Congress; and (2) it effectively creates a federal tort [498 US 552] of malicious prosecution, thereby encroaching upon various state law causes of action.

[12] We begin by noting that any Rules Enabling Act challenge to Rule 11 has a large hurdle to get over. The Federal Rules of Civil Procedure are not enacted by Congress, but "Congress participates in the rulemaking process." Wright & Miller § 1332, at 40, and n 74, citing Amendments to the Rules of Civil Procedure for the United States District Courts, HR Doc No. 54, 98th Cong, 1st Sess, 3-25 (1983). Additionally, the Rules do not go into effect until Congress has had at least seven months to look them over. See 28 USC § 2074 [28 USCS § 2074]. A challenge to Rule 11 can therefore succeed "only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule . . . transgresses neither the terms of the Enabling Act nor constitutional restrictions." Hanna v Plumer, 380 US 460, 471, 14 L Ed 2d 8, 85 S Ct 1136 (1965).

[11b] This Court's decision in Burlington Northern R. Co. v Woods, 480 US 1, 94 L Ed 2d 1, 107 S Ct 967 (1987), presents another hurdle. There, the Court considered the

Act's proscription against interference with substantive rights and held, in a unanimous decision, that "Rules which *incidentally* affect litigants' substantive rights do not violate this provision if reasonably necessary to maintain the integrity of that system of rules." Id., at 5, 94 L Ed 2d 1, 107 S Ct 967 (emphasis added). There is little doubt that Rule 11 is reasonably necessary to maintain the integrity of the system of federal practice and procedure, and that any effect on substantive rights is incidental. See id., at 8, 94 L Ed 2d 1, 107 S Ct 967. We held as much only last Term in Cooter & Gell: "It is now clear that the central purpose of Rule 11 is to deter baseless filings in district court and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts." 496 US, at 393, 110 L Ed 2d 359, 110 S Ct 2447.

Petitioner's challenges do not clear these substantial hurdles. In arguing that the monetary sanctions in this case constitute impermissible fee shifting, Business Guides relies

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on the Court's statement in Alyeska Pipeline Service Co. v Wilderness Society, 421 US 240, 247, 44 L Ed 2d 141, 95 S Ct 1612 (1975), that, in the absence of legislative guidance, courts do not have the power "to reallocate the burdens of litigation" by awarding costs to the losing party in a civil rights suit; they have only the power to sanction a party for bad faith. See id., at 258-259, 44 L Ed 2d 141, 95 S Ct 1612. The initial difficulty with this argument is that Alyeska dealt with the courts' inherent powers, not the Rules Enabling Act. Rule 11 sanctions do not constitute the kind of fee shifting at issue in Alyeska. Rule 11 sanctions are not tied to the outcome of litigation; the relevant inquiry is whether a specific filing was, if not successful, at least well founded. Nor do sanctions shift the entire cost of litigation; they shift only the cost of a discrete event. Finally, the Rule calls only for "an appropriate sanction"—attorney's fees are not mandated. As we explained in Cooter & Gell: "Rule 11 is not a fee-shifting statute . . . . 'A movant under Rule 11 has no entitlement to fees or any other sanction.' " 496 US, at 409, 110 L Ed 2d 359, 110 S Ct 2447, quoting American Judicature Society, Rule 11 in Transition, The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11, p 49 (Burbank, reporter 1989).

Also without merit is Business Guides' argument that Rule 11 creates a federal common law of malicious prosecution. We rejected a similar claim in Cooter & Gell. But see 496 US, at 411-412, 110 L Ed 2d 359, 110 S Ct 2447 (Stevens, J., dissenting). The main objective of the Rule is not to reward parties who are victimized by litigation; it is to deter baseless filings and curb abuses. See id., at 393, 409, 110 L Ed 2d 359, 110 S Ct 2447. Imposing monetary sanctions on parties that violate the Rule may confer a benefit on other litigants, but the Rules Enabling Act is not violated by such incidental effects on substantive rights. See Woods, supra, at 5, 8, 94 L Ed 2d 1, 107 S Ct 967. Additionally, we are confident that district courts will resist the temptation to use sanctions as substitutes for tort damages. This case is a good example. Chromatic asked that the sanctions award include consequential damages, but the District Court refused.

"[W]hile sympathetic to [Chromatic's] [498 US 554] plight," the court was "not persuaded that such compensation is within the purview of Rule 11." 121 FRD, at 406. In the event that a district court misapplies the Rule in a particular case, the error can be corrected on appeal. "But misapplications do not themselves provide a basis for concluding that Rule 11 was the result of . . . distinct errors in prima facie judgment during the development and promulgation of the rule." Wright & Miller § 1332, at 40.

[1i, 2f] In sum, we hold today that Rule 11 imposes an objective standard of reasonable inquiry on represented parties who sign papers or pleadings. We have no occasion to determine whether or under what circumstances a nonsigning party may be sanctioned. The District Court found that Business Guides failed to conduct a reasonable inquiry before signing the initial TRO application and before submitting the signed declaration of its Director of Research, Michael Lambe. Consequently, the District Court imposed $13,865.66 in sanctions against Business Guides and dismissed the action with prejudice. The Court of Appeals affirmed each of these rulings. For the reasons stated herein, the judgment of the Court of Appeals is affirmed.

SEPARATE OPINION

Justice **Kennedy,** with whom Justice **Marshall** and Justice **Stevens** join, and with whom Justice **Scalia** joins as to Parts I, III, and IV, dissenting.

The purpose of Federal Rule of Civil Procedure 11 is to control the practice of attorneys, or those who act as their own attorneys, in the conduct of litigation in the federal courts. Extending judicial power far beyond that boundary, the Court, relying only on its rulemaking authority, now holds that citizens who seek the aid of the federal courts may risk money damages or other sanctions if they do not satisfy some objective standard of care in the preparation or litigation of a case. This holding is an extraordinary departure from settled principles governing liability for misuse of the courts, just as it departs from the structure of the Rule itself. [498 US 555] The result is all the less defensible in that the sanctions will apply quite often to those so uninformed that they sign a paper without necessity. Where the rules or circumstances require a verified complaint or affidavit, the majority's construction of Rule 11 affords no avenue of escape from this most troubling and chilling liability.

In my view, the text of the Rule does not support this extension of federal judicial authority. Under a proper construction of Rule 11, I should think it an abuse of discretion to sanction a represented litigant who acts in good faith but errs as to the facts.

I

Though the case turns upon a single sentence in Rule 11, the majority recognizes that the whole text of the Rule must be considered, not just the sentence in isolation. See Richards v United States, 369 US 1, 11, 7 L Ed 2d 492, 82 S Ct 585 (1962). The majority errs, however, in its interpretation of the text which precedes and the text which follows the sentence in question. And the result is quite contrary to the Rule's history and the commentary that accompanied its adoption. The majority in the last analysis can rely only upon the following sentence from the rule: "The signature of an attorney or *party* constitutes a certificate by the signer . . . that to the best of the signer's knowledge, information, and belief *formed after reasonable inquiry* it is well grounded in fact. . . ." Fed Rule Civ Proc 11 (emphasis added). From this it reasons: Business Guides is a party; agents of Business Guides signed papers submitted on the company's behalf; therefore, Business Guides assumed a duty of reasonable inquiry.

But Rule 11's fifth sentence must be construed in light of its first two sentences, which provide that "[e]very pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record," and that "[a] party who is not represented by an attorney" shall sign the papers in person. Fed Rule Civ Proc 11. Neither of the first two sentences requires, or even contemplates,

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a signature by a represented party. Nor is a represented party's signature required by any later portion of the Rule. In context, then, one may with reason correlate "[t]he signature of an attorney or party" that constitutes a Rule 11 certification with the signatures of attorneys and *unrepresented parties* provided for earlier in the Rule. We employed just such an analysis last Term in Pavelic & LeFlore v Marvel Entertainment Group, 493 US 120, 124, 107 L Ed 2d 438, 110 S Ct 456 (1989), reasoning that "in a paragraph beginning with a requirement of individual signature, and then proceeding to discuss the import and consequences of signature, . . . references to the signer in the later portions must reasonably be thought to connote the individual signer mentioned at the outset." As we concluded in Pavelic & LeFlore, I would again hold the drafters of Rule 11 intended to bind those whose signatures are provided for in the Rule itself. The disjunction between represented parties and those whose signatures are significant for purposes of the Rule is borne out by the Rule's last sentence, which provides for sanctions upon "the person who signed [the paper], a represented party, or both." In my view, this sentence contemplates that the represented party and the person who signs will be different persons.

All would concede the primary purpose of the Rule is to govern those who practice before the courts, and the history of Rule 11's certification requirements illustrates the radical nature of the change wrought by the majority's construction. At least since Sir Thomas More served as Chancellor of England, bills in equity have required the signature of counsel. Risinger, Honesty in Pleading and Its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11, 61 Minn L Rev 1, 10-12, and n 22 (1976). Counsel could be required to pay the costs of an aggrieved party if a bill contained "irrelevant, impertinent, or scandalous" matter. J. Story, Equity Pleadings § 47, pp 41-42 (1838). Justice Story explained that the purpose of the required signature was "to secure regularity, relevancy and decency in the allegations

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of the Bill, and the responsibility and guaranty of counsel, that upon the instructions given to him, and the case laid before him, there is good ground for the suit in the manner in which it is framed." See Risinger, supra, at 9-13. Justice Story's explanation for counsel's signature was incorporated into Rule XXIV of the Equity Rules of 1842,[1] and the certification requirements were expanded in Rule 24 of the 1912 Equity Rules.[2] See Risinger, supra, at 13. Rule 11, adopted in 1938, extended the signature requirement beyond attorneys to encompass unrepresented parties as well.[3]

[498 US 558]

But it did not apply the certification requirements to unrepresented parties until 1983.

The 1983 amendments made substantial changes in Rule 11, expanding the duties imposed by the certification provisions, extending the certification requirements to unrepresented parties, and establishing that sanctions could, at least in some circumstances, be imposed on represented parties. But in light of the history of Rule 11's certification provisions as a set of duties imposed on counsel, I see no reason to believe that the Rule as amended attaches any particular significance to the signature of a represented party. It is more plausible that the language relied upon by the majority was designed to bring the signatures of unrepresented parties, already required by the Rule, within the certification provisions. This ensures that every pleading, motion, or other paper filed in federal court bears at least one signature constituting a Rule 11 certification. Applying the certification requirements to those who appear on their own behalf preserves the Rule's well-understood object of imposing obligations on those who practice before the court. A pro se litigant in essence stands in the place of an attorney. By its uncritical extension of the Rule's certification provisions to represented parties, the majority's reading severs the certification requirements from their purpose and origin.

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[1] "Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed." Rules of Practice for the Courts of Equity of the United States, 1 How xxxix, xlviii (1842).

[2] "Every bill or other pleading shall be signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instructions laid before him regarding the case there is good ground for the same; that no scandalous matter is inserted in the pleading; and that it is not interposed for delay." Rules of Practice for the Courts of Equity of the United States, 226 US 627, 655 (1912).

[3] Prior to 1983, Rule 11 read:

"Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilfull violation of this rule an attorney may be subjected to appropriate disciplinary action. Similarly action may be taken if scandalous or indecent matter is inserted." Fed Rule Civ Proc 11, 28 USC App (1982 ed).

If the drafters of the 1983 amendments had intended a radical departure from prior practice by imposing duties on represented parties that before had been imposed only on attorneys, one might expect discussion of the change in the Advisory Committee's Notes accompanying the 1983 amendments. But the Notes say nothing of the kind. They refer instead to "the standard of conduct expected of *attorneys* who sign pleadings and motions," or the "expanded nature of the *lawyer's* certification," or employ similar phrases indicating that the Rule's certification duties relate to attorneys and those who perform the functions of attorneys. Advisory Committee's Notes on Fed Rule Civ Proc 11, 28 USC

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App, pp 575-576 [USCS Court Rules, Fed Rules of Civ Proc, Notes following Rule 11.] (emphasis added).[4] In fact, the Notes imply that Rule 11 certification requirements were not intended to attach to the signature of a represented party, and that a represented party may be held liable for sanctions only when his attorney has signed a paper in violation of the Rule. For instance, the Notes provide:

> "If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, *the party the signing attorney represents,* or both, or on an unrepresented party who signed the pleading, and the new rule so provides." Advisory Committee's Notes on Fed Rule Civ Proc 11, 28 USC App, at 576 [USCS Court Rules, Fed Rules of Civ Proc, Notes following Rule 11] (emphasis added).

The failure to mention the signature of a represented party is a startling omission if such a signature could violate the Rule. The assumption of this passage, that a represented party can be sanctioned in some instances because his attorney signed in violation of the Rule, not because the party did, finds further support in the next paragraph of the Notes. It begins, "*Even though it is the attorney whose signature violates the rule,* it may be appropriate under the circumstances of the case to impose a sanction on the client." Ibid. (emphasis added).

Consider as well the portion of the Notes indicating that "[a]mended Rule 11 *continues* to apply to anyone who signs a pleading, motion, or other paper." Ibid. (emphasis added). Since Rule 11 did not impose any duties on a represented party who signed papers prior to 1983, it is difficult to fathom what this passage means if the 1983 amendments had the effect attributed to them by the majority. The passage makes sense only if it means that Rule 11 continues to apply to anyone whose signature is provided for in the Rule itself.

[498 US 560]

With little support for its views in the text of Rule 11 or the Advisory Committee's Notes, the majority turns to the works of scholars. Even here, though, the passages quoted from the treatise authored by Professors Wright and Miller do not seem to me unambiguous endorsements of the majority's position. They speak of Rule 11's expansion to " 'all signers, not just attorneys' " or " 'non-attorney signers.' " Ante, at 545-546, 112 L Ed 2d, at 1155 (quoting 5A C. Wright & A. Miller, Federal Practice and Procedure § 1331, pp 21-22, and n 54 (2d ed 1990)). But "signer" is a term of art in Rule 11, and under a proper interpretation it applies to those whose signatures the Rule itself requires. In any event, these snippets from a multivolume treatise do not reflect studied consideration of the precise question before the Court, whether a represented party's signature comes within the Rule 11 certification requirements. The only explicit reference I find in that treatise to the signature of a represented party is the statement that such signatures are "unnecessary, but not improper." 5A Wright & Miller, supra, § 1333, at 47. This falls far short of the majority's position.

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[4] See, Advisory Committee's Notes on Fed Rule Civ Proc 11, 28 USC App, p 575 [USCS Court Rules, Fed Rules of Civ Proc, Notes following Rule 11] ("The new language is intended to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the *attorney* and reenforcing those obligations by the imposition of sanctions") (emphasis added; citation omitted).

The majority's construction can draw scant support from the deterrent policies of Rule 11. See Cooter & Gell v Hartmarx Corp., 496 US 384, 393, 110 L Ed 2d 359, 110 S Ct 2447 (1990) ("[A]ny interpretation [of Rule 11] must give effect to the Rule's central goal of deterrence"). Since the Rule does not require represented parties to sign pleadings, motions, or other papers, the certification requirements will apply in many instances to a represented party who signs a paper as a volunteer. Given the majority's holding, enlistees will be few and far between. It can be supposed that after today's decision, most represented parties who sign papers without necessity will do so unaware that they subject themselves to the risk of sanctions. If so, their conduct will not be affected by the duties assumed. If the Rule 11 certification requirements were intended to apply to represented parties, its provisions would require them to sign papers covered by the Rule, not leave it as an option. I

[498 US 561]

can imagine no plausible reason for leaving it to the discretion of a represented party whether to assume Rule 11 certification duties and the concomitant risk of sanctions. The majority's suggestion that a represented party's signature might induce a court to give greater credence to a submitted paper, ante, at 546, 112 L Ed 2d, at 1155-1156, provides little justification for construing Rule 11 to become a trap for the unwary. Rule 11 already requires a represented party's attorney to sign, and few courts will be swayed by the fact that a pleading bears two Rule 11 signatures rather than one.

The majority errs in suggesting that Rule 11's third sentence, coupled with Rule 65(b), "required" the signature of Business Guides. Ante, at 543, 112 L Ed 2d, at 1153-1154. Rule 65(b) requires that applications for temporary restraining orders be verified *or supported by affidavit.* Since, as I explain, infra, at 562, 112 L Ed 2d, at 1166, affidavits are not "papers" within the meaning of the Rule and are often signed by individual witnesses and not parties, the rules did not require Business Guides to sign here.

Moreover, the majority's suggestion that Rule 11's third sentence "require[s]," ante, at 543, 112 L Ed 2d, at 1153, or "provide[s] for," ante, at 544, 112 L Ed 2d, at 1154, signatures by represented parties ignores the evident fact that this sentence abolishes any verification or affidavit requirement "[e]xcept when otherwise specifically provided by rule or statute," Fed Rule Civ Proc 11. Of course, the sentence in question recognizes that certain rules and statutes, such as Rule 65(b), still provide for complaints verified by parties or accompanied by affidavits. See, e. g., Fed Rule Civ Proc 23.1 (shareholder derivative suit); Fed Rule Civ Proc 27(a)(1) (perpetuation of testimony); Fed Rule Civ Proc 65(b) (ex parte request for temporary restraining order); 28 USC § 1734(b) [28 USCS § 1734(b)] (application for order establishing lost or destroyed record); § 2242 (application for writ of habeas corpus); see generally 5A Wright & Miller, supra, § 1339. It is not plausible to argue that Rule 11 seeks to bring those documents within its ambit, however, for this portion of the Rule existed prior to 1983, when represented

[498 US 562]

parties were mentioned for the first time. Wrongful verification already subjects one to potential prosecution for perjury, 18 USC §§ 1621, 1623 [18 USCS §§ 1621, 1623], and it is not clear why Rule 11 would impose additional duties on represented parties in those few instances where verification is necessary. Further, if the drafters of Rule 11 had intended to subject a verifying party to the duties imposed on a Rule 11 signer, a plain statement to that effect in the text of the Rule would have accomplished that result without the odd consequences of the majority's analysis.

The majority's holding that affidavits are included among the "pleadings, motions, or other papers" covered by Rule 11 will doubtless be the portion of its opinion having the greatest impact, and will come as a surprise to many members of the bar. An affidavit submitted in support of a represented party's position will now have to be signed by at least one attorney, or else must be stricken pursuant to Rule 11's sixth sentence. I would construe the "papers" covered by Rule 11 to be those which, like pleadings or motions, invoke the power of the court, as distinct from supporting affidavits alleging factual matters as in this case or under Federal Rule of Civil Procedure 56. Pursuant to Rule 11, one who signs a paper certifies that it "is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Since it would be meaningless to make such a certification with respect to an evidentiary document, I do not believe affidavits come within the intended scope of the Rule. As the majority all but admits, ante, at 549, 112 L Ed 2d, at 1157, its holding renders superfluous Rule 56(g), which imposes sanctions for summary judgment affidavits submitted in bad faith, since any affidavit submitted in bad faith will also fail the Rule 11 certification standards.

Though it seems unnecessary to the proper resolution of the case, I feel compelled to point out one further difficulty with the majority's analysis. The majority reasons that Business Guides here incurs liability under the portion of the

[498 US 563]

Rule's last sentence permitting a court to sanction "the person who signed" a pleading. But the majority's conclusion is in square conflict with our interpretation of that phrase last Term in Pavelic & LeFlore, 493 US 120, 107 L Ed 2d 438, 110 S Ct 456 (1989). There we construed the authority to sanction "the person who signed" to extend only to an individual attorney and not to the firm on whose behalf he signed. Though a law firm cannot be a "person who signed," the majority now says that a corporation may. But the gist of our rationale in Pavelic & LeFlore was that the duties imposed by Rule 11's certification requirements attach to an *individual* signer, rather than an entity the signer represents. We said: "It is as strange to think that the phrase 'person who signed' in the last sentence refers to the partnership represented by the signing attorney, as it would be to think that the earlier phrase 'the signer has read the pleading' refers to a reading not necessarily by the individual signer but by someone in the partnership." Id., at 124, 107 L Ed 2d 438, 110 S Ct 456. It is just as strange, I submit, to assert that here a corporation is the "person who signed," and that the corporation thereby represented that it "ha[d] read the pleading."

In Pavelic & LeFlore, moreover, we rejected an appeal to " 'long and firmly established legal principles of partnership and agency' ":

> "We are not dealing here . . . with common-law liability, but with a Rule that strikingly departs from normal common-law assumptions such as that of delegability. The signing attorney cannot leave it to some trusted subordinate, or to one of his partners, to satisfy himself that the filed paper is factually and legally responsible; by signing he represents not merely the fact that it is so, but also the fact that he personally has applied his own judgment." Id., at 125, 107 L Ed 2d 438, 110 S Ct 456.

The majority seeks now to resurrect the same principles of agency we put to rest last Term. The president of Business Guides and other employees signed papers submitted in support of the company's position, and the Court holds the company

assumed a duty, perhaps delegable to other agents, to comply with the Rule 11 certification requirements. Either the Court was wrong last Term or it is wrong now. The duties imposed by Rule 11 either apply to corporate entities or they do not. The better resolution would be to hold that the signatures of represented parties, including corporations and partnerships, have no significance for Rule 11 purposes.

II

Applied to attorneys, Rule 11's requirement of reasonable inquiry can be justified as within the traditional power of the courts to set standards for the bar. Our decisions recognize the "disciplinary powers which English and American courts (the former primarily through the Inns of Court) have for centuries possessed over members of the bar, incident to their broader responsibility for keeping the administration of justice and the standards of professional conduct unsullied." Cohen v Hurley, 366 US 117, 123-124, 6 L Ed 2d 156, 81 S Ct 954 (1961). An attorney acts not only as a client's representative, but also as an officer of the court, and has a duty to serve both masters. Likewise, applying this duty of reasonable inquiry to pro se litigants, as amended Rule 11 does, can be viewed as a corollary to the courts' power to control the conduct of attorneys. Requiring pro se litigants to make the Rule 11 certification ensures that, in each case, at least one person has taken responsibility for inquiry into the relevant facts and law.

But it is a long step from this traditional judicial role to impose on a represented party the duty of reasonable inquiry prior to the filing of a lawsuit, measured by an objective standard applied in hindsight by a federal judge. Until now, it had never been supposed that citizens at large are, or ought to be, aware of the contents of the Federal Rules of Civil Procedure, or that those rules impose on them primary obligations for their conduct. This new remedy far exceeds any previous authority of a federal court to sanction a represented party. The rules we prescribe have a statutory authorization

[498 US 565]

and need not always track the inherent authority of the federal courts. See Sibbach v Wilson & Co., 313 US 1, 85 L Ed 479, 61 S Ct 422 (1941). At the same time, the further our rules depart from our traditional practices, the more troubling becomes the question of our rulemaking authority.

In the Rules Enabling Act, Congress has delegated to this Court authority to prescribe "general rules of practice and procedure," 28 USC § 2072(a) [28 USCS § 2072(a)], which may not "abridge, enlarge or modify any substantive right," § 2072(b). The grant of authority to regulate procedure and the denial of authority to alter substantive rights expresses proper concern for federalism and separation of powers. See 19 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4509 (1982). Congress desired the courts to regulate "practice and procedure," an area where we have expertise and some degree of inherent authority. But Congress wanted the definition of substantive rights left to itself in cases where federal law applies, or to the States where state substantive law governs.

In my view, the majority's reading of Rule 11 raises troubling concerns with respect to both separation of powers and federalism. At the federal level, the new duty discovered by the majority in the text of the Rule is one that should be created, if at all, by Congress. In Alyeska Pipeline Service Co. v Wilderness Society, 421 US 240, 44 L Ed 2d 141, 95 S Ct 1612 (1975), while confirming the authority of the courts to award attorney's fees against a party conducting vexatious or bad-faith litigation, we reversed an award of attorney's fees made on the theory that the prevailing party had acted as a "private attorney general." We reaffirmed the American Rule that litigants in most circumstances must bear their own costs, and noted that Congress had itself provided for fee awards under various statutes when it thought fee shifting necessary to encourage certain types of claims. We held that "it [was] not for us to invade the legislature's province by redistributing litigation costs in the manner" proposed in that case. Id., at 271, 44 L Ed 2d 141, 95 S Ct 1612.

[498 US 566]

As interpreted by the majority, Rule 11 "redistribut[es] litigation costs" much like the fee-shifting theory rejected in Alyeska Pipeline. The majority's distinction between an "appropriate sanction" under Rule 11 based on a "discrete event" and the fee shifting at issue in Alyeska Pipeline, ante, at 553, 112 L Ed 2d, at 1160, breaks down in a case like this one where the "discrete event" was the filing of the lawsuit and the "appropriate sanction" was the payment of respondents' attorney's fees coupled with dismissal of the suit. Any mechanism for redistributing costs, even the inherent sanctioning authority of the federal courts, has the potential to affect decisions concerning whether and where to file suit. But the risk of deterring a meritorious suit is slight where sanctions are only available for bad-faith or frivolous claims. On the other hand, when a party's prefiling conduct is subject to evaluation for objective reasonableness by the court, the risk of filing suit changes and there arises a real risk of deterring meritorious claims. Under the majority's holding in this case, the deterrent effect will arise most often where the rules require verification of complaints. See supra, at 562, 112 L Ed 2d, at 1166. In particular, one may expect reticence to seek temporary restraining orders since the time pressures inherent in such situations create an acute risk of sanctions for unreasonable prefiling inquiry.

The majority does not tell us what standard it thinks should be applied in deciding whether to sanction a represented party who has not signed a Rule 11 paper. Ante, at 554, 112 L Ed 2d, at 1161. The chilling impact of the majority's negligence standard will be much greater if the majority applies it in that circumstance as well. This result seems a plausible consequence of the majority's reasoning. See ante, at 549-550, 112 L Ed 2d, at 1158. It is not the business of this Court to prescribe rules "redistributing litigation costs" in a manner that discourages good-faith attempts to vindicate rights granted by the substantive law. Kaiser Aluminum & Chemical Corp. v Bonjorno, 494

[498 US 567]

US 827, 835, 108 L Ed 2d 842, 110 S Ct 1570 (1990) ("[T]he allocation of the costs accruing from litigation is a matter for the legislature, not the courts").

Our potential incursion into matters reserved to the States also counsels against adoption of the majority's rule. Just as the various statutory fee-shifting mechanisms reflect policy choices by Congress regarding the extent to which certain types of litigation should be encouraged or discouraged, state tort law reflects comparable state policies. As interpreted by the majority, Rule 11 places on those represented parties who sign papers subject to the Rule duties far exceeding those imposed by state tort law. In general, States permitting recovery for malicious prosecution or abuse of process require the plaintiff to prove malice or improper purpose as a necessary element. W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §§ 120-121 (5th ed 1984); 1 F. Harper, F. James, & O. Gray, The Law of Torts § 4.8 (2d ed 1986); Restatement (Second) of Torts § 676 (1977). As interpreted by the majority, Rule 11 creates a new tort of "negligent prosecution" or "accidental abuse of process," applicable to any represented party ignorant enough to sign a pleading or other Rule 11 paper. Cf. Response to a Practitioner's Commentary on the Actual Use of Amended Rule 11, 54 Ford L Rev 28, 29-30 (1985) (remarks of Judge Charles Sifton); Brief for Petitioner 40.

In this case, the District Court imposed sanctions on a corporation for the actions of its agents taken in reliance on business records developed to safeguard the company's property rights in its own research. The decision to impose sanctions required the court, sitting without a jury, to make judgments about the skill and care that companies of this kind must use in their business practices. We tolerate judgments about the care an attorney must use because we deem judges to know the standards appropriate for the practice of law. We do not have similar expertise in the workings of private enterprise or the conduct and supervision of investigations made by a company to protect and defend its rights. And

[498 US 568]

though the majority would seem to suggest it, I should not have thought that before a person or entity seeks the aid of the federal courts, it ought to know the contents of the Federal Rules of Civil Procedure, rules that, at least until now, were the domain of lawyers and not the community as a whole.

A rule sanctioning misconduct during the litigation process will often satisfy the Rules Enabling Act because it "affects only the process of enforcing litigants' rights and not the rights themselves." Burlington Northern R. Co. v Woods, 480 US 1, 8, 94 L Ed 2d 1, 107 S Ct 967 (1987). As applied to attorneys, and perhaps those who act as their own attorneys, the same can be said of Rule 11's sanctions for failure to conduct a reasonable prefiling inquiry. That much we established in Cooter & Gell v Hartmarx Corp., 496 US, at 393, 110 L Ed 2d 359, 110 S Ct 2447. See ante, at 552, 112 L Ed 2d, at 1160. But the presumption that a Federal Rule is valid carries less weight in a case such as this, where "the intended scope of [the] Rule is uncertain," 19 Wright, Miller, & Cooper, at 147-148, and the construction of Rule 11 adopted today extends our role far beyond its traditional and accepted boundaries. Whether or not Rule 11 as construed by the majority exceeds our rulemaking authority, these concerns weigh in favor of a reasonable, alternative interpretation, one which, as I said at the outset, is more consistent with the text of the Rule. See Cooter & Gell, supra, at 391, 110 L Ed 2d 359, 110 S Ct 2447 ("We . . . interpret Rule 11 according to its plain meaning, . . . in light of the scope of the congressional authorization [in the Rules Enabling Act]"); 19 Wright, Miller, & Cooper, at 148 ("If a federal court concludes it is uncertain whether a Civil Rule truly governs a given question of practice, and if a relevant state rule of law differs, the extent to which application of the Civil Rule would interfere with substantive rights is certainly one of the factors that should be considered in deciding whether the Civil Rule applies. In effect, the 'substantive rights'

[498 US 569]

limitation, and the concern it reflects for the integrity of state substantive policies, is relevant to determining the scope of the Civil Rules").

III

Under my analysis, an attorney must violate Rule 11 before a represented party can be sanctioned. Regardless of the standard of conduct applicable to represented parties, I would reverse because it has not been shown on this record that an attorney signed a paper in violation of the Rule. A Finley, Kumble attorney did sign the original complaint and application for a temporary restraining order. However, the District Court did not find that Finley, Kumble lawyers had violated the Rule at the time the complaint was submitted.

The District Court did conclude that Finley, Kumble attorneys failed to conduct a reasonable inquiry prior to submission of the Lambe declaration. The Lambe declaration was not itself signed by an attorney, however, and, under my analysis of the Rule, could not serve as a basis for sanctions. See also supra, at 562, 112 L Ed 2d, at 1166. Indeed, Mr. Lambe's signature was not even the signature of a party. Certainly, a corporation only acts through its agents; that does not mean that all actions by a corporation's agents are actions on behalf of the corporation. Unlike the signature of the company's president verifying the complaint, Mr. Lambe's signature was on his own behalf, and did not in any way purport to bind the corporation.

I doubt that the papers submitted to the court with the Lambe declaration violate Rule 11. The only action these documents requested of the court was that it accept the Lambe declaration under seal and review it in camera. The relief requested was in no sense dependent on the accuracy of the representations made by Lambe. Given the purpose of these documents, they were well supported by fact and existing law, and an attorney's signature on these papers

would not seem to me a violation of Rule 11 certification requirements.[5]

Even were I to find an attorney violation, I would view it as an abuse of discretion to sanction a represented party if the party has acted in good faith. I recognize that an objective standard does, and should, govern the conduct of the attorney. With respect to a represented party, though, I would reverse the decision below for having applied a standard of objective reasonableness rather than some subjective bad-faith standard.

IV

Just as patience is requisite in the temperament of the individual judge, so it must be an attribute of the judicial system as a whole. Our annoyance at spurious and frivolous claims, and our real concern with burdened dockets, must not drive us to adopt interpretations of the rules that make honest claimants fear to petition the courts. We may be justified in imposing penalties on attorneys for negligence or mistakes in good faith; but it is quite a different matter, and the exercise of a much greater and more questionable authority, for us to impose that primary liability on citizens in general. These concerns underscore my objections to the majority's holding. With respect, I dissent.

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[5] It might be argued that the attorney's signature on the original filings created a continuing duty to conduct reasonable inquiry and to amend or withdraw the pleadings as new facts came to light. Compare Thomas v Capital Security Serv., Inc., 836 F2d 866 (CA5 1988) (en banc), with Herron v Jupiter Transp. Co., 858 F2d 332, 335-336 (CA6 1988). See Burbank, The Transformation of American Civil Procedure: The Example of Rule 11, 137 U Pa L Rev 1925, 1930, n 27 (1989). However, I would be unwilling to adopt such a construction of the Rule in a case such as this, where the issue has not been briefed.

OPINION OF JUSTICE IN CHAMBERS

[498 US 1306]

MISSISSIPPI, Applicant
v
KEVIN LEWIS TURNER

498 US 1306, 112 L Ed 2d 1172, 111 S Ct 1032

[No. A-661]

March 2, 1991.

Decision: Application by Mississippi for extension of time within which to file certiorari petition, because of budget cuts resulting in staff reductions, denied by Scalia, J.

SUMMARY

Counsel for the state of Mississippi, which was petitioning for a writ of certiorari to the Supreme Court of Mississippi, requested a 30-day extension of time in which to file the petition. The state submitted that the extension was required due to state budget cuts which had resulted in a reduction in the state's appellate staff.

Scalia, J., as Circuit Justice, denied the state's application for extension of time, for the reasons stated in the headnote below.

HEADNOTE

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal § 887 — certiorari — application for time extension — staff reduction

An individual Justice of the United States Supreme Court will deny a state's application for an extension of time within which to file a petition for a writ of certiorari, where the reason given is that state budgetary cuts have resulted in a reduction in appellate staff; counsel's overextended caseload does not constitute "good cause shown" for an extension of time to file a certiorari

SUBJECT OF ANNOTATION

Beginning on page 1278, infra

Time requirements under Supreme Court Rule 13 (and similar predecessors) for petitions for writ of certiorari petition, under Rule 13.2 of the United States Supreme Court Rules, unless such overextended caseload is the result of events unforeseen and uncontrollable by both counsel and client, which is not so in this case; like any other litigant, the state must choose between hiring more attorneys and taking fewer appeals, and the state's budget allocations cannot alter the court's filing requirements. [Per Scalia, J., as Circuit Justice.]

[See annotation p 1278, infra]

OPINION

Justice **Scalia,** Circuit Justice.

In this case, the State of Mississippi has requested a 30-day extension of time within which to file a petition for a writ of certiorari to the Mississippi Supreme Court. The State submits that the extension is required due to "state budgetary cuts," which have resulted in a reduction in appellate staff.

The law states that the "time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court." 28 USC § 2101(d) [28 USCS § 2101(d)]. Those rules provide that "[a] petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the Clerk of this Court within 90 days after the entry of judgment," Rule 13.1. This period may be extended by a Justice of this Court "for good cause shown" for a period not to exceed 60 days, Rule 13.2, but an application for such an extension "is not favored," Rule 13.6.

In my view, counsel's overextended caseload is not "good cause shown" unless it is the result of events unforeseen and uncontrollable by both counsel and client. That is not so here. Like any other litigant, the State of Mississippi must choose between hiring more attorneys and taking fewer appeals.

Its budget allocations cannot, and I am sure were not expected to, alter this Court's filing requirements.

The application is denied.

It is so ordered.

EDITOR'S NOTE

An annotation on "Time requirements under Supreme Court Rule 13 (and similar predecessors) for petitions for writ of certiorari," appears p 1278, infra.

MEMORANDUM CASES

No. 89-1018. Ayuda, Inc., et al., Petitioners v Richard Thornburgh, Attorney General of the United States, et al.

498 US 1117, 112 L Ed 2d 1174, 111 S Ct 1068.

February 25, 1991. On petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of McNary v Haitian Refugee Center, Inc. 498 US 479, 112 L Ed 2d 1005, 111 S Ct 888 (1991).

Same case below, 279 App DC 252, 880 F2d 1325.

No. 90-602. Paul Yoash, et al., Petitioners v McLean Contracting Company, Inc.

498 US 1117, 112 L Ed 2d 1174, 111 S Ct 1068.

February 25, 1991. On petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of McDermott International, Inc. v Wilander, 498 US 337, 112 L Ed 2d 866, 111 S Ct 807 (1991).

Same case below, 907 F2d 1481.

No. 87-7065. Dimple Podborny, Petitioner v Ohio

498 US 1117, 112 L Ed 2d 1174, 111 S Ct 1089.

February 25, 1991. The motion to substitute party in place of petitioner, deceased, is denied. It appearing that petitioner died October 15, 1990, the petition for a writ of certiorari is dismissed.

Same case below, 41 Ohio App 3d 135, 534 NE2d 926.

No. D-922. In the Matter of Disbarment of Ralph Weiss

498 US 1117, 112 L Ed 2d 1174, 111 S Ct 1068.

February 25, 1991. Disbarment order entered.

No. D-927. In the Matter of Disbarment of Michael Isaacson

498 US 1117, 112 L Ed 2d 1174, 111 S Ct 1068.

February 25, 1991. Disbarment order entered.

No. D-928. In the Matter of Disbarment of Michael Jennings Keady

498 US 1117, 112 L Ed 2d 1175, 111 S Ct 1068.

February 25, 1991. Disbarment order entered.

No. D-946. In the Matter of Disbarment of Donald J. Richardson, Jr.

498 US 1117, 112 L Ed 2d 1175, 111 S Ct 1068.

February 25, 1991. Disbarment order entered.

No. D-969. In the Matter of Disbarment of Joseph J. Finkelstein

498 US 1117, 112 L Ed 2d 1175, 111 S Ct 1069.

February 25, 1991. It is ordered that Joseph J. Finkelstein, of Miami, Florida, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-970. In the Matter of Disbarment of David B. Maxwell

498 US 1118, 112 L Ed 2d 1175, 111 S Ct 1069.

February 25, 1991. It is ordered that David B. Maxwell, of Stafford, Texas, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-971. In the Matter of Disbarment of Elaine Roemisch Crane

498 US 1118, 112 L Ed 2d 1175, 111 S Ct 1069.

February 25, 1991. It is ordered that Elaine Roemisch Crane, of Willoughby Hills, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within forty days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. 109, Original. State of Oklahoma and State of Texas, Plaintiffs v State of New Mexico

498 US 1118, 112 L Ed 2d 1175, 111 S Ct 1069.

February 25, 1991. The motion of Oklahoma for divided argument on behalf of plaintiffs is granted. The motion of New Mexico that oral argument be set for the March calendar rather than the April calendar is denied.

No. 90-50. Ellis Gregory, Jr., and Anthony P. Nugent, Jr., Judges, Petitioners v John D. Ashcroft, Governor of Missouri

498 US 1118, 112 L Ed 2d 1176, 111 S Ct 1069.

February 25, 1991. The motion of Missouri Bar for leave to file a brief as amicus curiae is granted.

No. 90-615. Rafael Peretz, Petitioner v United States

498 US 1118, 112 L Ed 2d 1176, 111 S Ct 1070.

February 25, 1991. The motion of petitioner for leave to proceed further herein in forma pauperis is granted.

No. 90-992. Nevada, et al., Petitioners v James D. Watkins, Secretary of Energy, et al.

498 US 1118, 112 L Ed 2d 1176, 111 S Ct 1070.

February 25, 1991. The motion of petitioners to defer consideration of the petition for a writ of certiorari is denied.

No. 90-681. Barbara Hafer, Petitioner v James C. Melo, Jr., et al.

498 US 1118, 112 L Ed 2d 1176, 111 S Ct 1070.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit granted.

Same case below, 912 F2d 628.

No. 90-857. Marc Gilbert Doggett, Petitioner v United States

498 US 1119, 112 L Ed 2d 1176, 111 S Ct 1070.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit granted.

Same case below, 906 F2d 573.

No. 90-985. Jayne Bray, et al., Petitioners v Alexandria Women's Health Clinic, et al.

498 US 1119, 112 L Ed 2d 1176, 111 S Ct 1070.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted.

Same case below, 914 F2d 582.

No. 90-584. Southwest Marine, Inc., Petitioner v Byron Gizoni

498 US 1119, 112 L Ed 2d 1176, 111 S Ct 1071.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted limited to Question 3 presented by the petition.

Same case below, 909 F2d 385.

No. 90-1074. Wayne Estelle, Warden, Petitioner v Mark Owen McGuire

498 US 1119, 112 L Ed 2d 1177, 111 S Ct 1071.

February 25, 1991. The motion of respondent for leave to proceed in forma pauperis is granted. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.

Same case below, 902 F2d 749.

No. 90-703. Martin Mitchell Stevens, Petitioner v Oregon, et al.

498 US 1119, 112 L Ed 2d 1177, 111 S Ct 1071.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Oregon denied.

Same case below, 100 Or App 481, 786 P2d 1296.

No. 90-787. F. L. Farr, Petitioner v Federal Deposit Insurance Corporation, et al.

498 US 1119, 112 L Ed 2d 1177, 111 S Ct 1071, reh den (US) 113 L Ed 2d 737, 111 S Ct 1642.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 904 F2d 703.

No. 90-845. Errol MacDonald, Petitioner v United States

498 US 1119, 112 L Ed 2d 1177, 111 S Ct 1071.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 766.

No. 90-854. Donald J. Diesen, Petitioner v John Hessburg, Thomas Daly, and Duluth News-Tribune

No. 90-1079. John Hessburg, Thomas Daly, and Duluth News Tribune, Petitioners v Donald J. Diesen

498 US 1119, 112 L Ed 2d 1177, 111 S Ct 1071, 111 S Ct 1072.

February 25, 1991. Petitions for writs of certiorari to the Supreme Court of Minnesota denied.

Same cases below, 455 NW2d 446.

No. 90-862. Robert M. Wainwright, Petitioner v United States

498 US 1119, 112 L Ed 2d 1178, 111 S Ct 1072.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 253.

No. 90-866. Stanley Kasal, et al., Petitioners v Federal Deposit Insurance Corporation, as Liquidator of Citizens State Bank of Gibbon

498 US 1119, 112 L Ed 2d 1178, 111 S Ct 1072.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 913 F2d 487.

No. 90-875. Carnival Cruise Lines, Inc., Petitioner v Balbino Jimenez Garay

No. 90-1070. Balbino Jimenez Garay, Petitioner v Carnival Cruise Lines, Inc.

498 US 1119, 112 L Ed 2d 1178, 111 S Ct 1072.

February 25, 1991. Petitions for writs of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same cases below, 904 F2d 1527.

No. 90-885. Kuldip Singh Mundi, Petitioner v United States

498 US 1119, 112 L Ed 2d 1178, 111 S Ct 1072.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 892 F2d 817.

No. 90-887. Gaetana R. Ketchel, et al., Petitioners v Bainbridge Township, et al.

498 US 1120, 112 L Ed 2d 1178, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 52 Ohio St 3d 239, 557 NE2d 779, 1 ALR5th 1137.

No. 90-907. Gaetano Vastola and Elias Saka, Petitioners v United States

498 US 1120, 112 L Ed 2d 1178, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 865.

No. 90-917. Kathleen A. Laughlin, Trustee, Petitioner v Internal Revenue Service

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 912 F2d 197.

No. 90-947. Elling O. Eide, Petitioner v Sarasota County, Florida

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 908 F2d 716.

No. 90-962. Alamo Rent-A-Car, Inc., Petitioner v Sarasota-Manatee Airport Authority

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 906 F2d 516.

No. 90-991. Railway Labor Executives' Association, et al., Petitioners v Chicago & North Western Transportation Company, et al.

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1073.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 908 F2d 144.

No. 90-997. Steven K. Orsburn, Petitioner v United States

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1074.

February 25, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 31 MJ 182.

No. 90-1000. Joseph E. Landa, II, Petitioner v United States

498 US 1120, 112 L Ed 2d 1179, 111 S Ct 1074.

February 25, 1991. Petition for writ of certiorari to the United States Court of Military Appeals denied.

Same case below, 32 MJ 49.

No. 90-1040. Juan Antonio Pena and Noe Santana, Petitioners v Texas

498 US 1120, 112 L Ed 2d 1180, 111 S Ct 1074, reh den (US) 113 L Ed 2d 737, 111 S Ct 1642.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Texas, First District, denied.

No. 90-1041. Gilbert DiLucia, et al., Petitioners v Town Board of Town of Westford, New York, et al.

498 US 1120, 112 L Ed 2d 1180, 111 S Ct 1074.

February 25, 1991. Petition for writ of certiorari to the Appellate Division, Supreme Court of New York, Third Judicial Department, denied.

Same case below, 160 App Div 2d 1152, 553 NYS2d 921.

No. 90-1042. Captain Groves, et al., Petitioners v Gilbert Hostler

498 US 1120, 112 L Ed 2d 1180, 111 S Ct 1074.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 1158.

No. 90-1045. Capitol News Agency Co., Inc., et al., Petitioners v Illinois

498 US 1120, 112 L Ed 2d 1180, 111 S Ct 1075.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 137 Ill 2d 162, 148 Ill Dec 1, 560 NE2d 303.

No. 90-1047. National Amusements, Inc., Petitioner v City of Springdale, Ohio, et al.

498 US 1120, 112 L Ed 2d 1180, 111 S Ct 1075.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 53 Ohio St 3d 60, 558 NE2d 1178.

No. 90-1065. Randall Ream, Petitioner v Indiana

498 US 1121, 112 L Ed 2d 1180, 111 S Ct 1075.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Indiana, Third District, denied.

Same case below, 555 NE2d 863.

No. 90-1067. James A. Pavela, Petitioner v Florence M. Malone, Independent Executor of the Estate of Martin J. Malone

498 US 1121, 112 L Ed 2d 1180, 111 S Ct 1705.

February 25, 1991. Petition for

writ of certiorari to the Appellate Court of Illinois, First District, denied.

Same case below, 198 Ill App 3d 960, 145 Ill Dec 60, 556 NE2d 678.

No. 90-1077. Michelle Stephenson, Petitioner v DeKalb County, Indiana Department of Public Welfare

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1075.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Indiana, Third District, denied.

Same case below, 551 NE2d 881.

No. 90-1084. Joseph A. Mayercheck, Petitioner v Supreme Court of Pennsylvania, Western District, et al.

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1075.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 919 F2d 136.

No. 90-1095. Frances A. Armstrong, et al., Petitioners v Marathon Oil Company

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1076.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Ohio, Hancock County, denied.

Same case below, 66 Ohio App 3d 127, 583 NE2d 462.

No. 90-1113. Henry Anderson, Petitioner v Chrysler Motors Corporation, et al.

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1076.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 468.

No. 90-1125. Allen Dunlap, Petitioner v Arkansas

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1076.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Arkansas denied.

Same case below, 303 Ark 222, 795 SW2d 920.

No. 90-1175. Mohamed Abdorabehe, et al., Petitioners v Michigan Department of Commerce, et al.

498 US 1121, 112 L Ed 2d 1181, 111 S Ct 1076.

February 25, 1991. Petition for

writ of certiorari to the Court of Appeals of Michigan denied.

No. 90-1178. Johnny Oyola, Petitioner v United States

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1076, reh den (US) 113 L Ed 2d 737, 111 S Ct 1642.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 916 F2d 708.

No. 90-1190. Anthony Vaughan, Petitioner v United States

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1077.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 914 F2d 966.

No. 90-5806. Alvin Parker, Petitioner v Michael D. Parsons, Warden, et al.

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1077, reh den (US) 113 L Ed 2d 484, 111 S Ct 1433.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6018. Ronald L. Davis, Petitioner v Neil Rone, Warden, et al.

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1077.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 909 F2d 1482.

No. 90-6128. Jerry Lee Word, Petitioner v United States

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1077, reh den (US) 113 L Ed 2d 672, 111 S Ct 1610.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 912 F2d 466.

No. 90-6130. Kevin Rankin, Petitioner v United States

498 US 1121, 112 L Ed 2d 1182, 111 S Ct 1077.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 908 F2d 965.

No. 90-6190. Harold Henderson, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1077.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 915 F2d 1577.

No. 90-6219. Sean Brown, Petitioner v Maine Department of Inland Fisheries and Wildlife

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for writ of certiorari to the Supreme Judicial Court of Maine denied.

Same case below, 577 A2d 1184.

No. 90-6238. Jeffrey A. Toffler, Petitioner v United States

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 914 F2d 239.

No. 90-6244. Robert C. Lamb, Petitioner v United States

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 914 F2d 1495.

No. 90-6363. Dana Anthony Louis, Petitioner v Wisconsin

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Wisconsin denied.

Same case below, 156 Wis 2d 470, 457 NW2d 484.

No. 90-6405. Ralph R. Ross, Petitioner v United States

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 917 F2d 997.

No. 90-6429. David Romo, Ann Romo, and Juanita Romo, Petitioners v United States

498 US 1122, 112 L Ed 2d 1183, 111 S Ct 1078.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 914 F2d 889.

No. 90-6464. Orlando Martinez, Petitioner v United States

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6474. Thomas Lindley Roberts, Petitioner v United States

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 915 F2d 889.

No. 90-6475. Anthony Frank San Filippo, Petitioner v United States

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6487. Herman Posey, Petitioner v United States Army

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 915 F2d 1561.

No. 90-6509. Robert L. Rhodes, Petitioner v United States

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 913 F2d 839.

No. 90-6530. J. Muina, Petitioner v El Guajiro Gang, et al.

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

No. 90-6533. Lonnie Gene Partout, Petitioner v United States

498 US 1122, 112 L Ed 2d 1184, 111 S Ct 1079.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Federal Circuit denied.

Same case below, 918 F2d 186.

No. 90-6563. Godwin Nonyelum Chinagorom, Petitioner v United States

498 US 1122, 112 L Ed 2d 1185, 111 S Ct 1080.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 915 F2d 1565.

No. 90-6584. Paul J. Fletcher, Petitioner v Fred B. Ugast, Chief Judge, Superior Court of the District of Columbia

498 US 1122, 112 L Ed 2d 1185, 111 S Ct 1080.

February 25, 1991. Petition for writ of certiorari to the District of Columbia Court of Appeals denied.

No. 90-6680. Robert Leo Oswald, Petitioner v Michigan Department of Corrections, et al.

498 US 1123, 112 L Ed 2d 1185, 111 S Ct 1080.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6689. Robert Leo Oswald, Petitioner v Thomas Taylor, et al.

498 US 1123, 112 L Ed 2d 1185, 111 S Ct 1080.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

No. 90-6695. William Tyree, Petitioner v George Vose, Commissioner, Massachusetts Department of Correction

498 US 1123, 112 L Ed 2d 1185, 111 S Ct 1080.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 915 F2d 1557.

No. 90-6701. Keith Upshaw, Petitioner v Terry D. Morris, et al.

498 US 1123, 112 L Ed 2d 1185, 111 S Ct 1081.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

No. 90-6703. Christopher P., a Minor, by his Mother and Next Friend, Norma P., et al., Petitioners v Mark J. Marcus, et al.

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1081.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 915 F2d 794.

No. 90-6706. James Carey, Petitioner v George Petsock, et al.

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1081.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 914 F2d 241.

No. 90-6715. John Laskaris, Petitioner v Elliot J. Segel, et al.

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1081.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1476.

No. 90-6717. Robert A. Gallagher, Petitioner v Ohio, et al.

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1081.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1571.

No. 90-6731. Randy Steven Kraft, Petitioner v Brad Gates, et al.

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1081.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 905 F2d 1540.

No. 90-6735. John Robert Demos, Jr., Petitioner v United States District Court for the Eastern District of Washington

498 US 1123, 112 L Ed 2d 1186, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

No. 90-6744. Roberta J. Maida, Petitioner v Massachusetts, et al.

498 US 1123, 112 L Ed 2d 1187, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

Same case below, 907 F2d 143.

No. 90-6746. Tony Harold Reed, Petitioner v Kenneth Yarbrough, et al.

498 US 1123, 112 L Ed 2d 1187, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 562.

No. 90-6747. Zebulin Vance Robbins, Petitioner v Washington

498 US 1123, 112 L Ed 2d 1187, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Washington, Division 2, denied.

No. 90-6777. John F. Gard, Petitioner v Chairman, National Credit Union Administration, et al.

498 US 1123, 112 L Ed 2d 1187, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6794. Robert Eder, Petitioner v United States

498 US 1123, 112 L Ed 2d 1187, 111 S Ct 1082.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 923 F2d 860.

No. 90-6797. Edwin Thompson, Petitioner v Mississippi

498 US 1124, 112 L Ed 2d 1187, 111 S Ct 1083.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 914 F2d 736.

No. 90-6801. Olakunle 'Lanre Arigbede, Petitioner v United States

498 US 1124, 112 L Ed 2d 1187, 111 S Ct 1083, reh den (US) 113 L Ed 2d 674, 111 S Ct 1612.

February 25, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 247, 914 F2d 249.

No. 90-6805. Harmon G. Amsler, Petitioner v Smith-Lustig Paper Box Mfg. Company, et al.

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1083.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 908 F2d 972.

No. 90-6809. Gustavo Otero, Petitioner v United States

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1083.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 916 F2d 715.

No. 90-6810. Michael A. Kennedy, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1083.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6823. Maria de Frasica-Valencia, Petitioner v United States

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1083.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6827. Reinel Naboyen, Petitioner v United States

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 917 F2d 562.

No. 90-6831. Dennis Williams, Petitioner v United States

498 US 1124, 112 L Ed 2d 1188, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 916 F2d 711.

No. 90-6843. James Franklin Ray, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 920 F2d 562.

No. 90-6845. Lovella Gean Spaulding, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 916 F2d 717.

No. 90-6846. Juan Miguel Gonzalez Castellanos, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 918 F2d 958.

No. 90-6851. Morris Allen Pritchett, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1084.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 922 F2d 838.

No. 90-6853. Tommy Lee Davis, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1085.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 28.

No. 90-6854. Feliciano Sanchez-Melchor, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1085.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 29.

No. 90-6856. Luis Garcia, Petitioner v United States

498 US 1124, 112 L Ed 2d 1189, 111 S Ct 1085.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 904 F2d 142.

No. 90-6858. Frank O. Castaneda, Petitioner v Gary L. Henman, Warden

498 US 1124, 112 L Ed 2d 1190, 111 S Ct 1085.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

Same case below, 914 F2d 981.

No. 90-6862. Jimmy Cal Jackson, Petitioner v United States

498 US 1125, 112 L Ed 2d 1190, 111 S Ct 1085.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 917 F2d 25.

No. 90-6864. Harry Walker Hayes, Petitioner v United States

498 US 1125, 112 L Ed 2d 1190, 111 S Ct 1085.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 915 F2d 1573.

No. 90-6869. Srikarn Srisookko, Petitioner v United States

498 US 1125, 112 L Ed 2d 1190, 111 S Ct 1086.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 567.

No. 90-6870. Paul Benjamin Davies, Petitioner v United States

498 US 1125, 112 L Ed 2d 1190, 111 S Ct 1086.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 922 F2d 848.

No. 90-6871. Ikechuku O. Agomo, Petitioner v United States, et al.

498 US 1125, 112 L Ed 2d 1190, 111 S Ct 1086.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

No. 90-6872. Luis Tamayo-Cariballo, Petitioner v United States

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1086, reh den (US) 113 L Ed 2d 739, 111 S Ct 1644.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 912 F2d 1468.

No. 90-6879. Helmut W. Schlosser, Petitioner v Washington, et al.

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1086.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 914 F2d 263.

No. 90-6881. Herbert Alwyn Smith and Joseph Shea Peeples, Petitioners v United States

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1086.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Same case below, 918 F2d 1032.

No. 90-6884. Wallace Clemons, Petitioner v Patrick Arvonio

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1087, reh den (US) 113 L Ed 2d 674, 111 S Ct 1613.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

No. 90-6885. Bernardo Alvarez, Petitioner v United States

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1087.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 918 F2d 182.

No. 90-6889. Darryl McClain, Petitioner v United States

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1087.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 920 F2d 934.

No. 90-6892. Joseph Lee Keffeler, Petitioner v United States

498 US 1125, 112 L Ed 2d 1191, 111 S Ct 1087.

February 25, 1991. Petition for writ of certiorari to the United

States Court of Appeals for the Tenth Circuit denied.

No. 90-6894. Robert Larry Mayes and Dallas Earl Scott, Petitioners v United States

498 US 1125, 112 L Ed 2d 1192, 111 S Ct 1087.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

Same case below, 917 F2d 457.

No. 90-6897. Ronald Giongo, Petitioner v United States

498 US 1125, 112 L Ed 2d 1192, 111 S Ct 1087.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied.

Same case below, 909 F2d 1478.

No. 90-6903. Chester Sargent, Petitioner v United States

498 US 1125, 112 L Ed 2d 1192, 111 S Ct 1088.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

Same case below, 918 F2d 664.

No. 90-6905. Aucencion Quintero-Ruiz, Petitioner v United States

498 US 1125, 112 L Ed 2d 1192, 111 S Ct 1088.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 29.

No. 90-6910. David Earl Jackson, Petitioner v United States

498 US 1125, 112 L Ed 2d 1192, 111 S Ct 1088.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit denied.

Same case below, 920 F2d 938.

No. 90-6911. Luciano Nunez, Petitioner v United States

498 US 1126, 112 L Ed 2d 1192, 111 S Ct 1088.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit denied.

No. 90-6915. Gumildo Ceballos Carranza, Petitioner v United States

498 US 1126, 112 L Ed 2d 1192, 111 S Ct 1088.

February 25, 1991. Petition for

writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 917 F2d 28.

No. 90-6923. Herald N. Frank, aka Harold N. Frank, Petitioner v United States

498 US 1126, 112 L Ed 2d 1193, 111 S Ct 1088.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 912 F2d 470.

No. 90-6928. Scott Davidson, Petitioner v United States

498 US 1126, 112 L Ed 2d 1193, 111 S Ct 1089.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

Same case below, 909 F2d 1489.

No. 90-6932. Lois E. Vetterneck, Petitioner v Wisconsin

498 US 1126, 112 L Ed 2d 1193, 111 S Ct 1089.

February 25, 1991. Petition for writ of certiorari to the Court of Appeals of Wisconsin, District III, denied.

Same case below, 156 Wis 2d 826, 458 NW2d 391.

No. 90-6941. James C. Wright, Petitioner v A. L. Lockhart, Director, Arkansas Department of Correction

498 US 1126, 112 L Ed 2d 1193, 111 S Ct 1089.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 914 F2d 1093.

No. 90-383. Sam Whitfield, Jr., et al., Petitioners v Bill Clinton, Governor of Arkansas, et al.

498 US 1126, 112 L Ed 2d 1193, 111 S Ct 1089.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied. Justice Blackmun would grant certiorari.

Same case below, 902 F2d 15.

No. 90-792. Leslie Salt Co., et al., Petitioners v United States, et al.

498 US 1126, 112 L Ed 2d 1194, 111 S Ct 1089.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied. Justice White would grant certiorari.

Same case below, 896 F2d 354.

No. 90-873. Paul F. Born, III, Petitioner v United States

498 US 1126, 112 L Ed 2d 1194, 111 S Ct 1090.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied. Justice White would grant certiorari.

Same case below, 903 F2d 490.

No. 90-955. Almont Shipping Company, Inc., Petitioner v Peter Browne Ruffin, et al.

498 US 1126, 112 L Ed 2d 1194, 111 S Ct 1090.

February 25, 1991. The motion of Preston Trucking Company for leave to file a brief as amicus curiae is granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit denied.

Same case below, 914 F2d 570.

No. 90-1089. Donald Bryant, et al., Petitioners v Winn-Dixie Stores, Inc., et al.

498 US 1126, 112 L Ed 2d 1194, 111 S Ct 1090.

February 25, 1991. The motion of petitioners to correct error in petition is granted. Petition for writ of certiorari to the Court of Appeals of Texas, Second District, denied.

Same case below, 786 SW2d 547.

No. 90-5672. Rick Dean Bressman, et al., Petitioners v Hal Farrier, et al.

No. 90-5854. Robert H. Young, Petitioner v Phyllis Kenny, et al.

498 US 1126, 112 L Ed 2d 1194, 111 S Ct 1090.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied in No. 90-5672. Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied in No. 90-5854.

Same cases below, 900 F2d 1305 (first case) and 907 F2d 874 (second case).

Justice White, with whom Justice O'Connor joins, dissenting.

These petitions raise the questions whether the exhaustion requirement of 28 USC § 2254 [28 USCS § 2254] applies when state prisoners, in a suit under 42 USC § 1983 [42 USCS § 1983], challenge the duration or conditions of their confinement but seek only damages or declaratory relief. The Eighth Circuit held here that exhaustion is required for § 1983 actions which include challenges to the conditions, as well as to the length or duration, of confinement. 900 F2d 1305, 1308 (1990). See also Offet v Solem, 823 F2d 1256 (CA8 1987). The Seventh Circuit has adopted the contrary position. See Viens v Daniels, 871 F2d 1328, 1333-1334 (1989). The Ninth Circuit held here that exhaustion is required for § 1983 actions seeking damages, so long as the requested relief requires as its predicate a determination that a prisoner's sentence is invalid or unconstitutionally long. 907 F2d 874, 876 (1990). Although no Court of Appeals has held to the contrary, several have recognized the apparent tension between this position and the decisions of this Court in Preiser v Rodriguez, 411 US 475, 36 L Ed 2d 439, 93 S Ct 1827 (1973), and Wolff v McDonnell, 418 US 539, 41 L Ed 2d 935, 94 S Ct 2963 (1974). See, e.g., 907 F2d, at 877; Viens, supra, at 1333; Gwin v Snow, 870 F2d 616, 623 (CA11 1989).

Because of the confusion and divergence of opinion these issues have generated in the Courts of Appeals, and the fact that this Court has not ruled definitively upon the issues presented, I would grant certiorari in these two cases.

No. 90-6259. Clarence Victor, Petitioner v Nebraska

498 US 1127, 112 L Ed 2d 1195, 111 S Ct 1091.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Nebraska denied.

Same case below, 235 Neb 770, 457 NW2d 431.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6578. Theodore Washington, Petitioner v Arizona

498 US 1127, 112 L Ed 2d 1195, 111 S Ct 1091, reh den (US) 113 L Ed 2d 737, 111 S Ct 1642.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Arizona denied.

Same case below, 165 Ariz 51, 796 P2d 853.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6639. Timothy Charles Davis, Petitioner v Alabama

498 US 1127, 112 L Ed 2d 1196, 111 S Ct 1091.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 554 So 2d 1111.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6640. Richard Caldwell, Petitioner v Tennessee

498 US 1127, 112 L Ed 2d 1196, 111 S Ct 1092.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Tennessee, Middle Division, denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6682. Walter Thomas, Petitioner v Illinois

498 US 1127, 112 L Ed 2d 1196, 111 S Ct 1092, reh den (US) 113 L Ed 2d 738, 111 S Ct 1643.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Illinois denied.

Same case below, 137 Ill 2d 500, 148 Ill Dec 751, 561 NE2d 57.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6711. Lawrence Alfred Landrum, Petitioner v Ohio

498 US 1127, 112 L Ed 2d 1196, 111 S Ct 1092, reh den (US) 113 L Ed 2d 673, 111 S Ct 1612.

February 25, 1991. Petition for writ of certiorari to the Supreme Court of Ohio denied.

Same case below, 53 Ohio St 3d 107, 559 NE2d 710.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6739. Doyle J. Williams, Petitioner v Bill Armontrout, Warden

498 US 1127, 112 L Ed 2d 1197, 111 S Ct 1092.

February 25, 1991. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 912 F2d 924.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant certiorari and vacate the death sentence in this case.

No. 90-6795. Mary Lee Orsini, Petitioner v Virginia Wallace, Warden

498 US 1128, 112 L Ed 2d 1197, 111 S Ct 1093.

February 25, 1991. The motion of petitioner for leave to amend the petition for writ of certiorari is granted. Petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit denied.

Same case below, 913 F2d 474.

No. 90-7187 (A-645). Lawrence Lee Buxton, Petitioner v Texas

498 US 1128, 112 L Ed 2d 1197, 111 S Ct 1095.

February 25, 1991. The application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, is denied. The petition for writ of certiorari to the Texas Court of Criminal Appeals is denied.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution and the petition for a writ of certiorari and vacate the death sentence in this case.

No. 90-7203 (A-654). Lawrence Lee Buxton, Petitioner v James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

498 US 1128, 112 L Ed 2d 1197, 111 S Ct 1095.

February 25, 1991. The application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, is denied. The petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit is denied. Justice Blackmun and Justice Stevens would grant the application for stay of execution.

Same case below, 925 F2d 816.

Justice Marshall, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v Georgia, 428 US 153, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), I would grant the application for stay of execution and the petition for a writ of certiorari and vacate the death sentence in this case.

No. 90-7020. In Re Carlos Connolly, Petitioner

498 US 1118, 112 L Ed 2d 1198, 111 S Ct 1093.

February 25, 1991. The petition for writ of habeas corpus is denied.

No. 90-6469. In Re Melvin Anderson, Petitioner

498 US 1118, 112 L Ed 2d 1198, 111 S Ct 1093.

February 25, 1991. The petition for writ of mandamus is denied.

No. 90-6490. In Re Henk Visser, Petitioner

498 US 1118, 112 L Ed 2d 1198, 111 S Ct 1093.

February 25, 1991. The petition for writ of mandamus is denied.

No. 90-6627. In Re Henk Visser, Petitioner

498 US 1118, 112 L Ed 2d 1198, 111 S Ct 1093.

February 25, 1991. The petition for writ of mandamus is denied.

No. 90-6690. In Re Robert Wightman, Petitioner

498 US 1118, 112 L Ed 2d 1198, 111 S Ct 1094.

February 25, 1991. The petition for writ of mandamus is denied.

No. 90-271. Joseph N. Aquilina, Petitioner v Immigration and Naturalization Service

498 US 1128, 112 L Ed 2d 1198, 111 S Ct 1094.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1040, 112 L Ed 2d 700, 111 S Ct 711.

No. 90-472. National Fabricators, Inc., Petitioner v National Labor Relations Board

498 US 1129, 112 L Ed 2d 1198, 111 S Ct 1094.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1024, 112 L Ed 2d 664, 111 S Ct 671.

No. 90-569. NAACP, Detroit Branch, et al., Petitioners v Detroit Police Officers Association, et al.

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 983, 112 L Ed 2d 526, 111 S Ct 514.

No. 90-5886. John D. Crouch, Petitioner v American National Bank, et al.

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1030, 112 L Ed 2d 678, 111 S Ct 686.

No. 90-6024. Cecil R. Vaughan, Petitioner v Rock Church, Incorporated

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1094.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1031, 112 L Ed 2d 679, 111 S Ct 688.

No. 90-6044. Norman Darrell Baxter, Petitioner v Ralph Kemp, Warden

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1041, 112 L Ed 2d 703, 111 S Ct 714.

No. 90-6173. Francis N. Bienville, Petitioner v United States

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1049, 112 L Ed 2d 779, 111 S Ct 759.

No. 90-6608. In Re James W. Bright, Petitioner

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

February 25, 1991. The petition for rehearing is denied.

Former Decision, 498 US 1065, 112 L Ed 2d 862, 111 S Ct 801.

No. 90-5278. Mary Louise Gordon, Petitioner v Art Agnos, et al.

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1095.

February 25, 1991. The petition for rehearing is denied. Justice Souter took no part in the consideration or decision of this petition.

Former Decision, 498 US 869, 112 L Ed 2d 151, 111 S Ct 188.

No. 87-1821. Modjeski & Masters, Appellant v Jan R. Carter and Leslie Carter

498 US 1129, 112 L Ed 2d 1199, 111 S Ct 1096.

February 27, 1991. The appeal from the Supreme Court of Louisiana in the above-entitled case was dismissed today pursuant to Rule 46 of this court.

No. 90-394. Bill Clinton, Governor of Arkansas, et al., Appellants v M. C. Jeffers, et al.

498 US 1129, 112 L Ed 2d 1200, 111 S Ct 1096.

February 27, 1991. The appeal from the United States District Court for the Eastern District of Arkansas in the above-entitled case was dismissed today pursuant to Rule 46 of this Court.

Same case below, 740 F Supp 585.

No. 87-1821. Modjeski & Masters, Appellant v Jan R. Carter and Leslie Carter

498 US 1129, 112 L Ed 2d 1200, 111 S Ct 1096.

February 27, 1991. In light of the dismissal of the appeal pursuant to Rule 46 of the Rules of this Court, supra, the motion of appellant to vacate the stay of execution of judgment entered May 2, 1988, is granted, and the stay is hereby vacated.

No. A-656 (90-7199). Robert Madden, Petitioner v Texas

498 US 1129, 112 L Ed 2d 1200, 111 S Ct 1096.

February 28, 1991. The application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, is granted pending the disposition by this Court of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition for a writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

SURVEY OF THE TERM,
ANNOTATIONS, AND BRIEFS
FOR CASES REPORTED IN THIS VOLUME

The annotations herein, prepared by the Editors, are indexed in the "Index to Decisions and Annotations" appearing at the end of this volume. For additional annotation references, consult the L Ed General Index to Decisions, Annotations, and Digest.

Selected summaries of briefs are by the publisher's staff.

SURVEY OF THE 1990–91 TERM

by

John F. Wagner Jr., J.D.

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§ 1. Generally; statistics

The Supreme Court's 1990-91 Term began on October 1, 1990. The court took a recess from June 27, 1991, until October 7, 1991, at which time the 1990-91 Term adjourned.

As the Supreme Court began its 1991 summer recess, Justice Thurgood Marshall announced that he was retiring as an Associate Justice. Justice Marshall, born in 1908, had been an Associate Justice of the Supreme Court since 1967.

Statistics released by the Office of the Clerk of the Supreme Court reveal that 6,316 cases appeared on the court's docket for the 1990-91 Term. Of these, 814 cases were carried over from the prior term, and 5,502 were docketed during the term.

Of the 6,316 cases on the docket during the 1990-91 Term, 5,171 nonoriginal cases were disposed of by such means as (1) the court's denial of review, (2) the court's dismissal, or (3) withdrawal. Another 109 nonoriginal cases were summarily decided. A total of 835 cases, including 11 original cases, were not acted upon, or remained undisposed of.

There were 201 cases available for argument during the 1990-91 Term, of which cases 125 were argued and 6 were dismissed or remanded without argument, leaving 70 cases still available for argument.

Of the 125 cases which were argued, 121 were disposed of by signed opinion, and 4 were disposed of by per curiam opinion.

§ 2. Landmark decisions

During the 1990-91 Term, the Supreme Court handed down a number of well-publicized landmark decisions. In a decision which was among the most publicly controversial of the term, the court held that regulations of the federal Department of Health and Human Services —which regulations specified that projects receiving funds under Title X of the Public Health Service Act (42 USCS §§ 300—300a-41) (1) may not provide counseling concerning the use of abortion, or referral for abortion, as a method of family planning; (2) may not engage in activities that encourage, promote, or advocate abortion as a method of family planning; and (3) must be organized so that they are physically and financially separate from prohibited abortion activities—were a permissible construction of Title X and were valid under the Federal Constitution's First and Fifth Amendments (Rust v Sullivan (1991, US) 114 L Ed 2d 233, 111 S Ct 1759, infra § 3).

The Supreme Court addressed the issue of sex discrimination in employment in a decision in which it was held that Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.), as amended by the Pregnancy Discrimination Act (42 USCS § 2000e(k)), forbids an employer from excluding a fertile female employee from certain jobs on account of the employer's concern for the health of a fetus that the woman might conceive (United Auto. Workers v Johnson Controls, Inc. (1991, US) 113 L Ed 2d 158, 111 S Ct 1196, infra § 27).

An important jurisdictional question with respect to aliens was resolved by the court during the 1990-91 Term, in a decision which held that a Federal District Court was not precluded by § 210(e) of the Immigration and Nationality Act (8 USCS § 1160(e)) from exercising federal question jurisdiction over an action alleging due process violations by the Immigration and Naturalization Service in administering an amnesty program for certain alien farmworkers (McNary v Haitian Refugee Center, Inc. (1991, US) 112 L Ed 2d 1005, 111 S Ct 888, infra § 6).

The court, upholding an Alabama punitive damages award against an insurance company for an agent's alleged fraud in connection with the lapse of health insurance, ruled that such award did not violate the due process clause of the Federal Constitution's Fourteenth Amendment (Pacific Mut. Life Ins. Co. v Haslip (1991, US) 113 L Ed 2d 1, 111 S Ct 1032, infra § 51).

In a significant school desegregation decision, the court held that a Federal Court of Appeals applied an overly stringent standard in determining whether to dissolve a prior injunctive decree which had imposed a desegregation plan for Oklahoma City's public schools (Board of Educ. of Oklahoma City Public Schools, etc. v Dowell (1991, US) 112 L Ed 2d 715, 111 S Ct 630, infra § 56).

And an important decision with respect to attorneys' fees was also handed down by the Supreme Court, which held that, for purposes of an award of such fees under the Equal Access to Justice Act (28 USCS § 2412), a "final judgment" was a judgment rendered by a court, rather than an adjudication by an administrative agency (Melkonyan v Sullivan (1991, US) 115 L Ed 2d 78, 111 S Ct 2157, infra § 12).

Several significant decisions were also issued by the court in criminal cases during the 1990-91 Term. With respect to particular criminal provisions, it was held in one case that Michigan's rape-shield statute, insofar as it authorized the preclusion of evidence of past sexual conduct between the alleged rape victim and the accused as a sanction for the accused's failure to comply with a notice requirement, was not per se violative of the Federal Constitution's Sixth Amendment (Michigan v Lucas (1991, US) 114 L Ed 2d 205, 111 S Ct 1743, infra § 52), and in another case that enforcement of Indiana's public indecency law, so as to prevent totally nude dancing, did not violate the Federal Constitution's First Amendment (Barnes v Glen Theatre, Inc. (1991, US) 115 L Ed 2d 504, 111 S Ct 2456, infra § 46).

In two major decisions concerning the Federal Constitution's Fourth Amendment, the Supreme Court held in one case that a request by police officers that a bus passenger consent to a search of the passenger's luggage does not necessarily constitute a "seizure" for Fourth Amendment purposes (Florida v Bostick (1991, US) 115 L Ed 2d 389, 111 S Ct 2382, infra § 57), and in the other case that judicial determinations of probable cause for warrantless arrests within 48 hours after the arrests generally comply with the promptness requirement of the Fourth Amendment (County of Riverside v McLaughlin (1991, US) 114 L Ed 2d 49, 111 S Ct 1661, infra § 57).

Confessions were the subject of another important decision during the term, which decision held that (1) a criminal defendant's murder confession to an informant in prison had been coerced, (2) the admission at a state criminal trial, in violation of the due process clause of the Federal Constitution's Fourteenth Amendment, of a defendant's involuntary confession is subject to harmless-error analysis, and (3) the admission, at the defendant's capital murder trial, of the defendant's confession to the informant was not harmless under the particular circumstances of the case (Arizona v Fulminante (1991, US) 113 L Ed 2d 302, 111 S Ct 1246, infra § 19).

The court held that (1) jury instructions with respect to a murder charge which did not require agreement on premeditation or felony-murder theories were not unconstitutional; and (2) a capital defendant was not entitled to instructions on all lesser included offenses (Schad v Arizona (1991, US) 115 L Ed 2d 555, 111 S Ct 2491, infra § 38).

Two landmark decisions involving cruel and unusual punishment were rendered by the Supreme Court during its 1990-91 Term. In one case, it was held that there was no per se bar, under the Federal Constitution's Eighth Amendment, either (1) prohibiting a capital sentencing jury from considering victim impact evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family, or (2) precluding a prosecutor from arguing such evidence at a capital sentencing hearing (Payne v Tennessee (1991, US) 115 L Ed 2d 720, 111 S Ct 2597, infra § 62). In the other case, the court held that an accused's claim that his sentence to a mandatory term of life in prison without possibility of parole, for possessing 672 grams of cocaine, constituted cruel and unusual punishment in violation of the Eighth Amendment on the ground that the mandatory nature of the sentence allowed the sentencer no opportunity to consider mitigating factors, was without merit (Harmelin v Michigan (1991, US) 115 L Ed 2d 836, 111 S Ct 2680, infra § 61).

Finally, in an important decision involving habeas corpus, the Supreme Court held that it was an abuse of the writ, so as to warrant a denial of federal habeas corpus relief, for a petitioner to claim that the admission of an informant's testimony at the petitioner's Georgia criminal trial had violated the petitioner's right to counsel under the Federal Constitution's Sixth Amendment, where the petitioner had failed to raise the claim in a prior federal habeas corpus petition (McCleskey v Zant (1991, US) 113 L Ed 2d 517, 111 S Ct 1454, infra § 34).

§ 3. Abortion

The Supreme Court held that regulations of the federal Department of Health and Human Services—which regulations specified that projects receiving funds under Title X of the Public Health Service Act (42 USCS §§ 300—300a-41) (1) may not provide counseling concerning the use of abortion, or referral for abortion, as a method of family planning; (2) may not engage in activities that encourage, promote, or advocate abortion as a method of family planning; and (3) must be organized so that they are physically and financially separate from prohibited abortion activities—were a permissible construction of Title X and were valid under the Federal Constitution's First and Fifth Amendments. [Rust v Sullivan (1991, US) 114 L Ed 2d 233, 111 S Ct 1759.]

§ 4. Administrative law

In a unanimous decision, the Supreme Court held that, where the United States Secretary of Labor and the Occupational Safety and Health Review Commission furnish reasonable but conflicting interpretations of an ambiguous regulation promulgated by the Secretary under the Occupational Safety and Health Act of 1970 (29 USCS §§ 651 et seq.), a reviewing court should defer to the Secretary's interpretation. [Martin v OSHRC (1991, US) 113 L Ed 2d 117, 111 S Ct 1171.]

See Rust v Sullivan (1991, US) 114 L Ed 2d 233, 111 S Ct 1759, supra § 3, in which the court held that Department of Health and Human Services regulations —which regulations specified that projects receiving funds under Title X of the Public Health Service Act (42 USCS §§ 300—300a-41) (1) may not provide counseling concerning the use of abortion, or referral for abortion, as a method of family planning; (2) may not engage in activities that encourage, promote, or advocate abortion as a method of family planning; and (3) must be organized so that they are physically and financially separate from prohibited abortion activities—were a permissible construction of Title X. [Rust v Sullivan (1991, US) 114 L Ed 2d 233, 111 S Ct 1759.]

See also Astoria Federal Sav. & Loan Assn. v Solimino (1991, US) 115 L Ed 2d 96, 111 S Ct 2166, infra § 26, in which it was held that a state administrative agency's judicially unreviewed findings on a state-law age discrimination claim have no preclusive effect on a claim in federal court under the Age Discrimination in Employment Act (29 USCS §§ 621-634).

§ 5. Admiralty and maritime law

The court held that there is a general maritime cause of action for the wrongful death of a seaman, but that damages are not recoverable in such an action for loss of society or for the decedent's lost future earnings. [Miles v Apex Marine Corp. (1990, US) 112 L Ed 2d 275, 111 S Ct 317.]

An employee's status as a "seaman" under the Jones Act (46 USCS Appx § 688) was held not to require that employee to aid in the navigation of a vessel. [McDermott Int'l, Inc. v Wilander (1991, US) 112 L Ed 2d 866, 111 S Ct 807.]

It was held that (1) there is no per se exception of agency contracts from the federal admiralty jurisdiction granted to Federal District Courts by 28 USCS § 1333(1); and (2) admiralty jurisdiction under § 1333(1) extended to a supplier's claim against a corporation with respect to the delivery of fuel by a third party in Saudi Arabia. [Exxon Corp. v Central Gulf Lines, Inc. (1991, US) 114 L Ed 2d 649, 111 S Ct 2071.]

§ 6. Aliens

The Supreme Court held that a Federal District Court was not precluded by § 210(e) of the Immigration and Nationality Act (8 USCS § 1160(e)) from exercising federal question jurisdiction over an action alleging due process violations by the Immigration and Naturalization Service in administering an amnesty program for certain alien farmworkers. [McNary v Haitian Refugee Center, Inc. (1991, US) 112 L Ed 2d 1005, 111 S Ct 888.]

§ 7. Antitrust

It was held that an agreement by two providers of bar review courses, which agreement contained mutual covenants not to compete in the other provider's market, was unlawful on the agreement's face, under § 1 of the Sherman Act (15 USCS § 1). [Palmer v BRG of Georgia, Inc. (1990, US) 112 L Ed 2d 349, 111 S Ct 401.]

A closely divided court held that the interstate commerce requirement for jurisdiction under § 1 of the Sherman Act was satisfied by an allegation of a conspiracy to exclude a surgeon from the market for ophthalmological services in Los Angeles, where the surgeon's staff privileges at a particular hospital were terminated as a result of peer-review proceedings. [Summit Health, Ltd. v Pinhas (1991, US) 114 L Ed 2d 366, 111 S Ct 1842.]

However, the Supreme Court held that federal antitrust laws were inapplicable to the actions of (1) a city which enacted certain billboard zoning ordinances, and (2) the company which controlled the relevant billboard market and which lobbied for the city ordinances. [Columbia v Omni Outdoor Advertising, Inc. (1991, US) 113 L Ed 2d 382, 111 S Ct 1344.]

§ 8. Arbitration

An employer was held not required to arbitrate grievances as to the application of a collective bargaining agreement's seniority clause to layoffs which took place almost 1 year after the agreement had expired. [Litton Financial Printing Div. v NLRB (1991, US) 115 L Ed 2d 177, 111 S Ct 2215.]

See Gilmer v Interstate/Johnson Lane Corp. (1991, US) 114 L Ed 2d 26, 111 S Ct 1647, infra § 26, in which it was held that a claim under the Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) could be subjected, under the Federal Arbitration Act (9 USCS §§ 1 et seq.), to compulsory arbitration pursuant to an arbitration agreement in a stock exchange's securities registration application.

§ 9. Assistance of counsel

The Supreme Court held that an accused's invocation of the right to the assistance of counsel, under the Federal Constitution's Sixth Amendment, during a judicial proceeding did not constitute invocation of the right to counsel derived by Miranda v Arizona (1966) 384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, from the Federal Constitution's Fifth Amendment. [McNeil v Wisconsin (1991, US) 115 L Ed 2d 158, 111 S Ct 2204.]

See Lozada v Deeds (1991, US) 112 L Ed 2d 956, 111 S Ct 860, infra § 34, in which it was held that a Federal Court of Appeals erred in denying a certificate of probable cause for the appeal of a habeas corpus judgment pursuant to 28 USCS § 2253, where the petitioner had contended in Federal District Court that (1) his trial counsel had failed to inform him of his right to appeal his state court convictions, and (2) such conduct constituted ineffective assistance of counsel.

See also McCleskey v Zant (1991, US) 113 L Ed 2d 517, 111 S Ct 1454, infra § 34, where the Supreme Court held that it was an abuse of the writ, so as to warrant a denial of federal habeas corpus relief, for a petitioner to claim that the admission of an informant's testimony at the petitioner's Georgia criminal trial had violated the petitioner's right to counsel under the Sixth Amendment, where the petitioner had failed to raise the claim in a prior federal habeas corpus petition.

Moreover, see Minnick v Mississippi (1990, US) 112 L Ed 2d 489, 111 S Ct 486, infra § 59, where it was held that a police officer's reinitiation of custodial interrogation of an accused without counsel present, after the accused had requested and consulted with counsel, violated the protections afforded by the rule of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880, as to the privilege under the Federal Constitution's Fifth Amendment against self-incrimination.

§ 10. Attachment

It was held that a Connecticut statute which authorized the prejudgment, ex parte attachment of realty, without bond and absent exigent circumstances, was violative of the due process clause of the Federal Constitution's Fourteenth Amendment, as such statute was applied in a case involving an assault claim. [Connecticut v Doehr (1991, US) 115 L Ed 2d 1, 111 S Ct 2105.]

§ 11. Attorneys—generally

The Supreme Court held that (1) a Nevada Supreme Court rule which prohibited a lawyer from making certain extrajudicial statements to the press was void for vagueness; but (2) the rule's requirement that such statements have a "substantial likelihood of material prejudice" satisfied the Federal Constitution's First Amendment. [Gentile v State Bar of Nevada (1991, US) 115 L Ed 2d 888, 111 S Ct 2720.]

See Irwin v Veterans Admin. (1990, US) 112 L Ed 2d 435, 111 S Ct 453, infra § 25, in which the court held that an employment discrimination suit against the Veterans Administration under Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) was untimely, where the suit was filed more than 30 days after notice from the Equal Employment Opportunity Commission was received at the office of an attorney who was allegedly absent.

See also Palmer v BRG of Georgia, Inc. (1990, US) 112 L Ed 2d 349, 111 S Ct 401, supra § 7, where it was held that an agreement by two providers of bar review courses violated § 1 of the Sherman Act (15 USCS § 1).

For Supreme Court decisions involving the assistance of counsel, see § 9, supra.

§ 12. —Attorneys' fees

Two cases decided during the Supreme Court's 1990-91 Term limited the reach of 42 USCS § 1988, under which federal courts are given discretion to allow attorneys' fees to prevailing parties in actions to enforce certain federal civil rights statutes. It was held in one case that § 1988 did not authorize an award of attorneys' fees to an attorney who represented himself in a successful action. [Kay v Ehrler (1991, US) 113 L Ed 2d 486, 111 S Ct 1435.] In the other case, the Supreme Court held that § 1988 conveys no authority to shift to the losing party fees for services rendered by experts in civil rights litigation. [West Virginia University Hosp., Inc. v Casey (1991, US) 113 L Ed 2d 68, 111 S Ct 1138.]

Another case involving attorneys' fees held that appointed counsel representing capital defendants before the Supreme Court are entitled to receive up to $5,000 in fees. [Re Berger (1991, US) 112 L Ed 2d 710, 111 S Ct 628.]

It was also held that a Federal District Court, in a diversity case, properly invoked its inherent power in assessing attorneys' fees as a sanction for a party's bad-faith conduct in the course of litigation. [Chambers v NASCO, Inc. (1991, US) 115 L Ed 2d 27, 111 S Ct 2123.]

And the Supreme Court held that, for purposes of an award of attorneys' fees under the Equal Access to Justice Act (28 USCS § 2412), a "final judgment" was a judgment rendered by a court, rather than an adjudication by an administrative agency. [Melkonyan v Sullivan (1991, US) 115 L Ed 2d 78, 111 S Ct 2157.]

§ 13. Aviation

Article 17 of the Warsaw Convention, which sets forth conditions under which an international air carrier can be held liable for injuries to passengers, was held not to allow recovery for mental or psychic injuries unaccompanied by physical injury or physical manifestation of injury. [Eastern Airlines, Inc. v Floyd (1991, US) 113 L Ed 2d 569, 111 S Ct 1489.]

§ 14. Bankruptcy—generally

The Supreme Court held that creditors who have filed claims against a bankruptcy estate are not entitled to a jury trial under the Federal Constitution's Seventh Amendment when they are sued by the bankruptcy trustee to recover allegedly preferential monetary transfers. [Langenkamp v Culp (1990, US) 112 L Ed 2d 343, 111 S Ct 330.]

It was held that the preponderance-of-the-evidence standard applies in determining the dischargeability of a debt in bankruptcy under 11 USCS § 523(a). [Grogan v Garner (1991, US) 112 L Ed 2d 755, 111 S Ct 654.]

Individual debtors who were not engaged in business were held to be eligible to reorganize under Chapter 11 of the Bankruptcy Code (11 USCS §§ 1101 et seq.). [Toibb v Radloff (1991, US) 115 L Ed 2d 145, 111 S Ct 2197.]

§ 15. —Liens

Two cases decided during the Supreme Court's 1990-91 Term pertained to the avoidance of liens in bankruptcy proceedings. In one case, the court held that a lien on a homestead, which lien was granted to a debtor's ex-wife to secure the value of her former interest, under a divorce decree extinguishing prior interests in the property, was not avoidable under 11 USCS § 522(f). [Farrey v Sanderfoot (1991, US) 114 L Ed 2d 337, 111 S Ct 1825.] However, in the other case, it was held that a Florida statute excluding certain liens from the scope of homestead protection in bankruptcy did not prevent such liens from being avoided under § 522(f). [Owen v Owen (1991, US) 114 L Ed 2d 350, 111 S Ct 1833.]

The Supreme Court also held that a mortgage lien securing an obligation for which a bankruptcy debtor's personal liability was previously discharged under Chapter 7 of the Bankruptcy Code (11 USCS §§ 701 et seq.) was a "claim," under 11 USCS § 101(5), that was includible in the debtor's reorganization plan under Chapter 13 of the Bankruptcy Code (11 USCS §§ 1301 et seq.). [Johnson v Home State Bank (1991, US) 115 L Ed 2d 66, 111 S Ct 2150.]

§ 16. Black lung benefits

It was held that the Secretary of Labor did not act unreasonably, or inconsistently with § 902(f)(2) of the Black Lung Benefits Act (30 USCS § 902(f)(2)), in promulgating interim regulations that permit the presumption of entitlement to black lung benefits to be rebutted with evidence demonstrating that a coal miner does not, or did not, have pneumoconiosis or that the miner's disability does not, or did not, arise from coal mine employment. [Pauley v BethEnergy Mines, Inc. (1991, US) 115 L Ed 2d 604, 111 S Ct 2524.]

§ 17. Civil procedural sanctions

A closely divided Supreme Court held that the sanctions provision of Rule 11 of the Federal Rules of Civil Procedure imposed an objective standard of reasonable inquiry on any party mandatorily or voluntarily signing a pleading, motion, or other paper. [Business Guides, Inc. v Chromatic Communications Enterprises, Inc. (1991, US) 112 L Ed 2d 1140, 111 S Ct 922.]

For a Supreme Court case involving the assessment of attorneys' fees as a sanction in federal civil litigation, see § 12, supra.

§ 18. Commerce clause

The court held that suits for violations of the Federal Constitution's commerce clause (Art I, § 8, cl 3) may be brought under 42 USCS § 1983. [Dennis v Higgins (1991, US) 112 L Ed 2d 969, 111 S Ct 865.]

See Trinova Corp. v Michigan Dept. of Treasury (1991, US) 112 L Ed 2d 884, 111 S Ct 818, infra § 65, in which it was held that the apportionment formula for the in-state "value added" subject to Michigan's value added, single business tax did not violate the commerce clause.

See also James B. Beam Distilling Co. v Georgia (1991, US) 115 L Ed 2d 481, 111 S Ct 2439, infra § 54, in which the Supreme Court held that the rule of Bacchus Imports, Ltd. v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049—which decision held that a state statute which imposed a discriminatory tax on imported liquors violated the commerce clause—applied retroactively to litigants in other cases.

§ 19. Confessions

It was held that (1) a criminal defendant's murder confession to an informant in prison had been coerced, (2) the admission at a state criminal trial, in violation of the due process clause of the Federal Constitution's Fourteenth Amendment, of a defendant's involuntary confession is subject to harmless-error analysis, and (3) the admission, at the defendant's capital murder trial, of the defendant's confession to the informant was not harmless under the particular circumstances of the case. [Arizona v Fulminante (1991, US) 113 L Ed 2d 302, 111 S Ct 1246.]

§ 20. Copyright

The Supreme Court held that (1) the alphabetical listings of names, accompanied by towns and telephone numbers, in the white pages of a telephone directory published by a telephone company are not copyrightable, and thus (2) a publishing company's nonconsensual copying of some of these listings into the publishing company's areawide telephone directory that covered part of the telephone company's service area did not infringe on the telephone company's copyright in its directory. [Feist Publications, Inc. v Rural Tel. Service Co. (1991, US) 113 L Ed 2d 358, 111 S Ct 1282.]

§ 21. Defamation

The court held that a jury question was presented as to whether published quotations which were attributed to a public figure possessed the degree of falsity necessary for the finding of actual malice which was required in defamation actions involving public figures. [Masson v New Yorker Magazine, Inc. (1991, US) 115 L Ed 2d 447, 111 S Ct 2419.]

§ 22. De novo review

The Supreme Court held that Federal Courts of Appeals are required to review de novo Federal District Courts' determinations of state law. [Salve Regina College v Russell (1991, US) 113 L Ed 2d 190, 111 S Ct 1217.]

§ 23. Diversity jurisdiction

The addition of a nondiverse limited partnership as a party, after the filing of a suit in Federal District Court, was held not to defeat diversity jurisdiction where the original parties were diverse when the suit was filed. [Freeport-McMoRAN, Inc. v K N Energy, Inc. (1991, US) 112 L Ed 2d 951, 111 S Ct 858.]

§ 24. Employee Retirement Income Security Act

In two cases decided during the 1990-91 Term, the Supreme Court held that the Employee Retirement Income Security Act (ERISA) (29 USCS §§ 1001 et seq.) pre-empted the application of state law. In one case, the court held that a state statute prohibiting employee welfare benefit plans from exercising subrogation rights on a claimant's tort recovery was pre-empted by ERISA. [FMC Corp. v Holliday (1990, US) 112 L Ed 2d 356, 111 S Ct 403.] In the other case, it was held that ERISA pre-empted a state common-law claim of wrongful discharge to prevent attainment of benefits under a pension plan. [Ingersoll-Rand Co. v McClendon (1990, US) 112 L Ed 2d 474, 111 S Ct 478.]

§ 25. Employment discrimination—generally

The Supreme Court held that an employment discrimination suit against the Veterans Administration under Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) was untimely, where the suit was filed more than 30 days after notice from the Equal Employment Opportunity Commission was received at the office of an attorney who was allegedly absent. [Irwin v Veterans Admin. (1990, US) 112 L Ed 2d 435, 111 S Ct 453.]

In another case, it was held that Title VII does not apply extraterritorially to regulate the employment practices of United States employers who employ United States citizens abroad. [EEOC v Arabian American Oil Co. (1991, US) 113 L Ed 2d 274, 111 S Ct 1227.]

§ 26. —Age discrimination

The Age Discrimination in Employment Act (ADEA) (29 USCS §§ 621-634) was the subject of several cases decided during the Supreme Court's 1990-91 Term. The court held that a demoted federal employee's age discrimination suit was timely under 29 USCS § 633a(d), where (1) the Equal Employment Opportunity Commission (EEOC) was notified on the 176th day after the demotion, and (2) the suit was filed more than 30 days after the EEOC was notified. [Stevens v Department of Treasury (1991, US) 114 L Ed 2d 1, 111 S Ct 1562.] It was also held that a claim under the ADEA could be subjected, under the Federal Arbitration Act (9 USCS §§ 1 et seq.), to compulsory arbitration pursuant to an arbitration agreement in a stock exchange's securities registration application. [Gilmer v Interstate/Johnson Lane Corp. (1991, US) 114 L Ed 2d 26, 111 S Ct 1647.] In addition, it was held, in a unanimous decision, that a state administrative agency's judicially unreviewed findings on a state-law age discrimination claim have no preclusive effect on a claim in federal court under the ADEA. [Astoria Federal Sav. & Loan Assn. v Solimino (1991, US) 115 L Ed 2d 96, 111 S Ct 2166.] Finally, the Supreme Court held that a provision of the Missouri Constitution which required that all judges other than municipal judges shall retire at the age of 70, as such provision was applied to state judges who had been appointed by the Governor and who had subsequently been retained in a retention election, did not violate either the ADEA—which was held not to apply to appointed state judges—or the equal protection clause of the Federal Constitution's Fourteenth Amendment. [Gregory v Ashcroft (1991, US) 115 L Ed 2d 410, 111 S Ct 2395.]

§ 27. —Sex discrimination

In a landmark sex discrimination case, the Supreme Court held that Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.), as amended by the Pregnancy Discrimination Act (42 USCS § 2000e(k)), forbids an employer from excluding a fertile female employee from certain jobs on account of the employer's concern for the health of a fetus that the woman might conceive. [United Auto. Workers v Johnson Controls, Inc. (1991, US) 113 L Ed 2d 158, 111 S Ct 1196.]

§ 28. Energy

The Supreme Court held that a Federal Energy Regulatory Commission (FERC) rate order—declaring that the prices which a public utility had paid an affiliate for coal were unreasonable and thus unrecoverable through the rates charged by the utility to its wholesale customers—was not pre-empted under the conflict-of-jurisdiction provisions of § 318 of the Federal Power Act (16 USCS § 825q), even though the coal prices paid by the utility conformed to Securities and Exchange Commission orders requiring such prices to be no greater than the affiliate's actual costs. [Arcadia v Ohio Power Co. (1990, US) 112 L Ed 2d 374, 111 S Ct 415.]

It was also held that the FERC (1) had authority, with respect to natural gas already produced, both to set a single ceiling price and to preauthorize certain service abandonments by producers; but (2) had no duty, in a particular rulemaking proceeding, to rule on "take-or-pay" contracts for natural gas. [Mobil Oil Exploration & Producing Southeast, Inc. v United Distribution Cos. (1991, US) 112 L Ed 2d 636, 111 S Ct 615.]

§ 29. Extortion

The court held that a state legislator's convictions for extortion, under the Hobbs Act (18 USCS § 1951), and for filing a false income tax return in violation of 26 USCS § 7206(1), were improperly affirmed by a United States Court of Appeals, where the affirmances were based on legal and factual grounds that had never been submitted to the jury. [McCormick v United States (1991, US) 114 L Ed 2d 307, 111 S Ct 1807.]

§ 30. Federal Insecticide, Fungicide, and Rodenticide Act

It was held that the Federal Insecticide, Fungicide, and Rodenticide Act (7 USCS §§ 136-136y) did not pre-empt the regulation of pesticides by local governments. [Wisconsin Public Intervenor v Mortier (1991, US) 115 L Ed 2d 532, 111 S Ct 2476.]

§ 31. Federal tax offenses

The Supreme Court held that, in a prosecution, under 26 USCS §§ 7201 and 7203, for "willfully" attempting to evade federal income taxes and "willfully" failing to file federal income tax returns, it was—for purposes of determining the defendant's willfulness—(1) error to instruct the jury to disregard the defendant's asserted beliefs that (a) wages are not income, and (b) he was not a taxpayer within the meaning of the Internal Revenue Code; but (2) not error to instruct the jury to disregard the defendant's claims that the tax laws were unconstitutional. [Cheek v United States (1991, US) 112 L Ed 2d 617, 111 S Ct 604.]

See McCormick v United States (1991, US) 114 L Ed 2d 307, 111 S Ct 1807, supra § 29, in which the Supreme Court held that a state legislator's conviction for filing a false income tax return in violation of 26 USCS § 7206(1) was improperly affirmed by a United States Court of Appeals, where the affirmance was based on legal and factual grounds that had never been submitted to the jury.

§ 32. Federal tort compensation

The court held that the Federal Employees Liability Reform and Tort Compensation Act of 1988—which amended the Federal Tort Claims Act (FTCA)—precluded a person injured abroad by a United States military physician from seeking damages from the physician. [United States v Smith (1991, US) 113 L Ed 2d 134, 111 S Ct 1180.]

It was also held that the discretionary function exception of the FTCA (28 USCS § 2680(a)) bars claims against federal agencies for negligent supervision of savings and loan associations' operations. [United States v Gaubert (1991, US) 113 L Ed 2d 335, 111 S Ct 1267.]

§ 33. Forum selection

The Supreme Court held that a forum-selection clause in tickets issued by a cruise line was enforceable in a personal-injury action by ticketholders, despite (1) a lack of bargaining over the clause, and (2) the supposed inconvenience of the forum to the ticketholders. [Carnival

Cruise Lines, Inc. v Shute (1991, US) 113 L Ed 2d 622, 111 S Ct 1522.]

§ 34. Habeas corpus

The court held that a Federal Court of Appeals erred in denying a certificate of probable cause for the appeal of a habeas corpus judgment pursuant to 28 USCS § 2253, where the petitioner had contended in Federal District Court that (1) his trial counsel had failed to inform him of his right to appeal his state court convictions, and (2) such conduct constituted ineffective assistance of counsel. [Lozada v Deeds (1991, US) 112 L Ed 2d 956, 111 S Ct 860.]

It was held that a Federal Court of Appeals, in a habeas corpus case, had improperly failed to give the statutory presumption of correctness to a state court finding that a prosecution witness had testified under a grant of immunity. [Burden v Zant (1991, US) 112 L Ed 2d 962, 111 S Ct 862.]

The Supreme Court also held that it was an abuse of the writ, so as to warrant a denial of federal habeas corpus relief, for a petitioner to claim that the admission of an informant's testimony at the petitioner's Georgia criminal trial had violated the petitioner's right to counsel under the Federal Constitution's Sixth Amendment, where the petitioner had failed to raise the claim in a prior federal habeas corpus petition. [McCleskey v Zant (1991, US) 113 L Ed 2d 517, 111 S Ct 1454.]

In two decisions dealing with habeas corpus proceedings in which the question of procedural default was considered, the Supreme Court held in one case that a Virginia court's three-sentence order provided an explicit dismissal, on state procedural default grounds, which was sufficient to bar a subsequent federal habeas corpus review of an accused's claims in a capital case [Coleman v Thompson (1991, US) 115 L Ed 2d 640, 111 S Ct 2546], and in the other case that, for purposes of determining whether there has been a state court procedural default generally barring subsequent federal habeas corpus review of an accused's claims, the last explained state order is presumed to control. [Ylst v Nunnemaker (1991, US) 115 L Ed 2d 706, 111 S Ct 2590.]

See Demarest v Manspeaker (1991, US) 112 L Ed 2d 608, 111 S Ct 599, infra § 48, in which it was held that 28 USCS § 1821 required the payment of witness attendance fees to a convicted state prisoner who testified at a federal trial pursuant to a writ of habeas corpus ad testificandum.

§ 35. Indians

It was held that (1) Oklahoma was empowered to collect taxes on sales of cigarettes to nontribal members on land held in trust for an Indian tribe by the Federal Government, but (2) the tribe was immune from suit. [Oklahoma Tax Com. v Citizen Band Potawatomi Indian Tribe (1991, US) 112 L Ed 2d 1112, 111 S Ct 905.]

The Supreme Court also held that (1) the Federal Constitution's Eleventh Amendment barred suits by Indian tribes against states without the states' consent; and (2) 28 USCS § 1362—under which Federal District Courts are granted jurisdiction of civil actions brought by Indian tribes in federal-question cases—did not operate so as to void the Eleventh Amendment bar. [Blatchford v Noatak (1991, US) 115 L Ed 2d 686, 111 S Ct 2578.]

§ 36. In forma pauperis proceedings

The court held that in forma pauperis status would be denied to an individual with respect to his present and all future petitions for extraordinary relief, where the court determined that the present petition, which repeated previously unsuccessful claims, was both frivolous and abusive. [Re Sindram (1991, US) 112 L Ed 2d 599, 111 S Ct 596.]

It was also held that a certiorari petition, and leave to proceed in forma pauperis on current and future petitions for extraordinary writs, would be denied as to a person who had made numerous in forma pauperis filings in the Supreme Court. [Re Demos (1991, US) 114 L Ed 2d 20, 111 S Ct 1569.]

In addition, the Supreme Court ordered that its Rule 39 be amended so as to allow the court to deny leave to proceed with frivolous or malicious in forma pauperis filings. [Re Amendment to Rule 39 (1991, US) 114 L Ed 2d 15, 111 S Ct 1572.]

§ 37. Joinder of parties

A Federal District Court's dismissal of a products liability diversity suit for failure to join potential joint tortfeasors was held to be erroneous under Rule 19 of the Federal Rules of Civil Procedure. [Temple v Synthes Corp. (1990, US) 112 L Ed 2d 263, 111 S Ct 315.]

§ 38. Jury instructions

The Supreme Court held that an instruction in a state homicide trial, defining "reasonable doubt" in terms of "grave" or "substantial" uncertainty and of need for "moral certainty," violated the due process clause of the Federal Constitution's Fourteenth Amendment. [Cage v Louisiana (1990, US) 112 L Ed 2d 339, 111 S Ct 328.]

It was held that improper instructions as to presumptions of malice in a South Carolina homicide trial were not harmless error absent a showing beyond reasonable doubt that the presumptions did not contribute to a finding of intent to kill. [Yates v Evatt (1991, US) 114 L Ed 2d 432, 111 S Ct 1884.]

And the court also held that (1) jury instructions with respect to a murder charge which did not require agreement on premeditation or felony-murder theories were not unconstitutional; and (2) a capital defendant was not entitled to instructions on all lesser included offenses. [Schad v Arizona (1991, US) 115 L Ed 2d 555, 111 S Ct 2491.]

§ 39. Jury selection

In two cases decided during the Supreme Court's 1990-91 Term which involved jury selection issues in the context of jurisdictional questions, the court held in one case [Ford v Georgia (1991, US) 112 L Ed 2d 935, 111 S Ct 850] that Georgia's contemporaneous objection rule—which required that challenges to a criminal trial jury based on the prosecution's allegedly discriminatory use of peremptory challenges be made after the jury is selected and before it is sworn—was not an adequate and independent state ground barring federal review of such a claim under the equal protection clause of the Federal Constitution's Fourteenth Amendment, where the defendant's trial had preceded the state court decision announcing that rule, and in the other case [Powers v Ohio (1991, US) 113 L Ed 2d 411, 111 S Ct 1364] that a white defendant in an Ohio criminal case had standing to raise an equal protection objection to the prosecutor's allegedly race-based exercise of peremptory challenges to exclude black venirepersons from the jury.

As to private litigants in civil cases which originate in Federal District Court, the Supreme Court held that, under the equal protection component of the due process clause of the Federal Constitution's Fifth Amendment, such litigants may not use peremptory challenges to exclude prospective jurors on account of their race. [Edmonson v Leesville Concrete Co. (1991, US) 114 L Ed 2d 660, 111 S Ct 2077.]

In a criminal case, the court held that an accused's right to an impartial jury under the Federal Constitution's Sixth Amendment, and the accused's right to due process under the Constitution's Fourteenth Amendment, were not violated by the refusal of a state trial judge, who also had refused to allow individual voir dire, to question prospective jurors on voir dire about the specific contents of the news reports to which they had been exposed concerning the accused, who was subsequently convicted of murder and sentenced to death. [Mu'Min v Virginia (1991, US) 114 L Ed 2d 493, 111 S Ct 1899.] The court also held that the equal protection clause of the Fourteenth Amendment was not shown to have been violated by a New York prosecutor's use of peremptory challenges to exclude Latino or allegedly Latino venirepersons from a state criminal trial jury, where the prosecutor claimed that the exclusion was due to alleged uncertainty as to whether the venirepersons would accept the interpreter's English translation of testimony by Spanish-speaking witnesses. [Hernandez v New York (1991, US) 114 L Ed 2d 395, 111 S Ct 1859.]

See Peretz v United States (1991, US) 115 L Ed 2d 808, 111 S Ct 2661, infra § 43, in which the Supreme Court held that a Federal District Court's assignment, to magistrates, of the duty of selecting a jury in a felony trial, where the parties consented to such selection, was

(1) permissible under the Federal Magistrates Act (28 USCS § 636), and (2) not constitutionally infirm.

§ 40. Justiciability

The question whether a provision of the California Constitution, which provision prohibited political parties' endorsements of candidates for nonpartisan offices, violated the Federal Constitution's First Amendment, was held by the Supreme Court to be nonjusticiable under the circumstances of the case. [Renne v Geary (1991, US) 115 L Ed 2d 288, 111 S Ct 2331.]

§ 41. Labor relations—generally

The Supreme Court held that § 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 USCS § 481(c)) does not require a court to evaluate the reasonableness of a labor union's rule prohibiting the mailing of campaign literature in advance of the union's nominating convention, before deciding whether a candidate's request that the union distribute campaign literature in advance of the nominating convention is reasonable. [International Organization of Masters, Mates & Pilots v Brown (1991, US) 112 L Ed 2d 991, 111 S Ct 880.]

It was held that (1) the rule that a union breaches its duty of fair representation if the union's actions are either arbitrary, discriminatory, or in bad faith, applies to all union activity, including contract negotiation; and (2) a union's agreement to settle a strike was not so arbitrary or discriminatory, under the circumstances, as to constitute a breach of the union's duty of fair representation. [Air Line Pilots Assn. v O'Neill (1991, US) 113 L Ed 2d 51, 111 S Ct 1127.]

A federal supervisor's allegedly negative letter as to a former employee's federal job performance was held not to deprive the employee of a liberty interest for purposes of the due process clause of the Federal Constitution's Fifth Amendment. [Siegert v Gilley (1991, US) 114 L Ed 2d 277, 111 S Ct 1789.]

And the court held that the use by a labor union, which represented a state college faculty, of dissenting faculty members' service fees—paid to the union in an amount equivalent to membership dues by faculty members who had declined to join the union—was, under the Federal Constitution's First Amendment, permissible for certain activities, but not permissible for other activities. [Lehnert v Ferris Faculty Assn. (1991, US) 114 L Ed 2d 572, 111 S Ct 1950.]

See Martin v OSHRC (1991, US) 113 L Ed 2d 117, 111 S Ct 1171, supra § 4, where it was held that a reviewing court should defer to the United States Secretary of Labor's interpretation of an employee safety regulation.

For cases involving seamen as employees, see § 5, supra; for cases involving the Employee Retirement Income Security Act, see § 24, supra; for cases involving employment discrimination generally, see § 25, supra; for cases involving age discrimination in employment, see § 26, supra; and for a case involving sex discrimination in employment, see § 27, supra.

§ 42. —Collective bargaining agreements

It was held that collective bargaining agreements that were silent as to judicial remedies did not bar the parties' recourse to courts under 29 USCS § 185 upon the failure of voluntary grievance procedures. [Groves v Ring Screw Works, Ferndale Fastener Div. (1990, US) 112 L Ed 2d 508, 111 S Ct 498.]

A provision of the Interstate Commerce Act (49 USCS § 11341(a)) was held to exempt a rail carrier in a consolidation approved by the Interstate Commerce Commission from any legal obligations imposed by a collective bargaining agreement, to the extent that such exemption is necessary to carry out the consolidation. [Norfolk & W. R. Co. v American Train Dispatchers Assn. (1991, US) 113 L Ed 2d 95, 111 S Ct 1156.]

The Supreme Court also held that a National Labor Relations Board rule (29 CFR § 103.30) which provided that with three exceptions, eight and only eight defined employee units are appropriate for collective bargaining in acute care hospitals was not facially invalid. [American Hosp. Assn. v NLRB (1991, US) 113 L Ed 2d 675, 111 S Ct 1539.]

See Litton Financial Printing Div. v NLRB (1991, US) 115 L Ed 2d 177, 111 S

Ct 2215, supra § 8, in which it was held that an employer was not required to arbitrate grievances as to the application of a collective bargaining agreement's seniority clause to layoffs which took place almost 1 year after the agreement had expired.

§ 43. Magistrates

Two cases decided during the Supreme Court's 1990-91 Term upheld referrals to magistrates by Federal District Courts under the Federal Magistrates Act (28 USCS § 636). In one case, the court held that a District Court's assignment, to magistrates, of the duty of selecting a jury in a felony trial, where the parties consented to such selection, was (1) permissible under the Federal Magistrates Act, and (2) not constitutionally infirm. [Peretz v United States (1991, US) 115 L Ed 2d 808, 111 S Ct 2661.] In the other case, it was held that 28 USCS § 636(b)(1)(B) authorized a nonconsensual referral to a United States magistrate for a hearing and recommended findings on a prisoner petition alleging a specific episode of unconstitutional conduct by prison administrators. [McCarthy v Bronson (1991, US) 114 L Ed 2d 194, 111 S Ct 1737.]

§ 44. Motor vehicles

The court held that genuine motor vehicle titles received by a person who knew that such titles incorporated fraudulently tendered odometer readings were "falsely made" within the meaning of 18 USCS § 2314. [Moskal v United States (1990, US) 112 L Ed 2d 449, 111 S Ct 461.]

§ 45. Notice of appeal

It was held that a premature notice of appeal filed from a Federal District Court's bench ruling was an effective notice of appeal, under Rule 4(a)(2) of the Federal Rules of Appellate Procedure, from a subsequently entered final judgment. [FirsTier Mortg. Co. v Investors Mortg. Ins. Co. (1991, US) 112 L Ed 2d 743, 111 S Ct 648.]

§ 46. Obscenity and nudity

Enforcement of Indiana's public indecency law, so as to prevent totally nude dancing, was held not to violate the Federal Constitution's First Amendment. [Barnes v Glen Theatre, Inc. (1991, US) 115 L Ed 2d 504, 111 S Ct 2456.]

See United States v R. Enterprises, Inc. (1991, US) 112 L Ed 2d 795, 111 S Ct 722, infra § 66, in which it was held that a Federal Court of Appeals had improperly quashed subpoenas duces tecum that had been issued in connection with a federal grand jury investigation of alleged interstate transportation of obscene materials.

§ 47. Postal service

The Supreme Court held that postal workers lacked standing to bring suit under 5 USCS § 702 to challenge a United States Postal Service regulation permitting international remailing by private couriers. [Air Courier Conference v American Postal Workers Union (1991, US) 112 L Ed 2d 1125, 111 S Ct 913.]

§ 48. Prisons and prisoners

In a unanimous decision, the Supreme Court held that 28 USCS § 1821 required the payment of witness attendance fees to a convicted state prisoner who testified at a federal trial pursuant to a writ of habeas corpus ad testificandum. [Demarest v Manspeaker (1991, US) 112 L Ed 2d 608, 111 S Ct 599.]

It was also held that the "deliberate indifference" standard was applicable to a prisoner's claim that conditions of the prisoner's confinement constituted cruel and unusual punishment in violation of the Federal Constitution's Eighth Amendment. [Wilson v Seiter (1991, US) 115 L Ed 2d 271, 111 S Ct 2321.]

See McCarthy v Bronson (1991, US) 114 L Ed 2d 194, 111 S Ct 1737, supra § 43, in which it was held that a United States magistrate was authorized to hear and make findings on a prisoner's petition without the prisoner's consent.

§ 49. Promissory estoppel: confidentiality of news source

By a closely divided vote, the Supreme Court held that the Federal Constitution's First Amendment did not prohibit an informant from recovering damages, under Minnesota promissory estoppel law, for a newspaper's breach of a promise of confidentiality given to the informant in exchange for information. [Cohen v Cowles Media Co. (1991, US) 115 L Ed 2d 586, 111 S Ct 2513.]

§ 50. Prosecutorial immunity

The Supreme Court held that an Indiana prosecutor was entitled, for purposes of liability for damages under 42 USCS § 1983, to (1) absolute immunity for participation in a probable cause hearing to obtain a search warrant, but (2) only qualified immunity for giving legal advice to the police in the investigative phase of a criminal case. [Burns v Reed (1991, US) 114 L Ed 2d 547, 111 S Ct 1934.]

§ 51. Punitive damages

An Alabama punitive damages award against an insurance company for an agent's alleged fraud in connection with the lapse of health insurance was held not to violate the due process clause of the Federal Constitution's Fourteenth Amendment. [Pacific Mut. Life Ins. Co. v Haslip (1991, US) 113 L Ed 2d 1, 111 S Ct 1032.]

§ 52. Rape-shield statute

It was held that Michigan's rape-shield statute, insofar as it authorized the preclusion of evidence of past sexual conduct between the alleged rape victim and the accused as a sanction for the accused's failure to comply with a notice requirement, was not per se violative of the Federal Constitution's Sixth Amendment. [Michigan v Lucas (1991, US) 114 L Ed 2d 205, 111 S Ct 1743.]

§ 53. Removal of actions

The Supreme Court held that 28 USCS § 1442(a)(1) does not permit the removal of an action from state court to federal court by federal agencies. [International Primate Protection League v Administrators of Tulane Educational Fund (1991, US) 114 L Ed 2d 134, 111 S Ct 1700.]

§ 54. Retroactivity of decision

The rule of Bacchus Imports, Ltd. v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049—which decision held that a state statute which imposed a discriminatory tax on imported liquors violated the Federal Constitution's commerce clause (Art I, § 8, cl 3)—was held to apply retroactively to litigants in other cases. [James B. Beam Distilling Co. v Georgia (1991, US) 115 L Ed 2d 481, 111 S Ct 2439.]

§ 55. Savings and loan institutions

On the same day during the Supreme Court's 1990-91 Term, the court decided two cases involving claimed tax deductions by savings and loan institutions. In both cases [Cottage Sav. Assn. v Commissioner (1991, US) 113 L Ed 2d 589, 111 S Ct 1503; and United States v Centennial Sav. Bank FSB (1991, US) 113 L Ed 2d 608, 111 S Ct 1512], it was held that a savings and loan institution realized tax-deductible losses under 26 USCS §§ 165(a) and 1001(a) when the institution exchanged 90-percent participation interests in one group of residential mortgage loans for 90-percent participation interests in a group of residential mortgage loans from other lenders, where the fair market value of the interests given up by the institution was approximately equal to the fair market value of the interests received, but less than the face value of the interests given up. In United States v Centennial Sav. Bank FSB, supra, it was also held that the penalties collected by the institution for the premature withdrawal of federally insured certificates of deposit were not excludible from gross income, under 26 USCS § 108 (later amended), as income by reason of the discharge of indebtedness.

See United States v Gaubert (1991, US) 113 L Ed 2d 335, 111 S Ct 1267, supra § 32, in which the Supreme Court held that the discretionary function exception of the Federal Tort Claims Act (28 USCS § 2680(a)) bars claims against federal agencies for negligent supervision of savings and loan associations' operations.

§ 56. School desegregation

It was held that a Federal Court of Appeals applied an overly stringent standard in determining whether to dissolve a prior injunctive decree which had imposed a desegregation plan for Oklahoma City's public schools. [Board of Educ. of Oklahoma City Public Schools, etc. v Dowell (1991, US) 112 L Ed 2d 715, 111 S Ct 630.]

§ 57. Search and seizure

Several aspects of the guarantee provided by the Federal Constitution's Fourth Amendment against unreasonable searches and seizures were examined and further delineated by the Supreme Court in cases decided during its 1990-91 Term. In construing the term "seizure" for purposes of the Fourth Amendment, the court held in one case that cocaine which was discarded by a person who was fleeing a police officer did not constitute the fruit of a "seizure" where the officer had not touched the person at the time that the cocaine was discarded [California v Hodari D. (1991, US) 113 L Ed 2d 690, 111 S Ct 1547], and in the other case that a request by police officers that a bus passenger consent to a search of the passenger's luggage does not necessarily constitute a "seizure" [Florida v Bostick (1991, US) 115 L Ed 2d 389, 111 S Ct 2382].

Two cases involved probable cause determinations. In one of these cases, the court held that judicial determinations of probable cause for warrantless arrests within 48 hours after the arrests generally comply with the promptness requirement of the Fourth Amendment. [County of Riverside v McLaughlin (1991, US) 114 L Ed 2d 49, 111 S Ct 1661.] In the other case, it was held that a warrantless search by the police of a paper bag found in an automobile trunk did not violate the Fourth Amendment, where the police had probable cause to believe that the bag contained marijuana. [California v Acevedo (1991, US) 114 L Ed 2d 619, 111 S Ct 1982.]

Finally, the Supreme Court held that a police officer's opening of a closed paper bag, which was found on the floor of a suspect's car during a search of the car for narcotics, did not violate the suspect's rights under the Fourth Amendment, where the suspect had consented to the search of the car for narcotics. [Florida v Jimeno (1991, US) 114 L Ed 2d 297, 111 S Ct 1801.]

§ 58. Securities regulation

In the first of three decisions during the Supreme Court's 1990-91 Term which involved the Securities Exchange Act of 1934 (15 USCS §§ 78 et seq.), the court held that a stockholder who had brought suit under § 16(b) of the Act (15 USCS § 78p(b)) retained standing to sue after his stock was exchanged for the stock of a new parent corporation in a merger transaction. [Gollust v Mendell (1991, US) 115 L Ed 2d 109, 111 S Ct 2173.]

It was held that private claims under § 10(b) of the Act (15 USCS § 78j(b)) were governed by 1-year and 3-year limitations periods contained in express remedial provisions of the Act. [Lampf, Pleva, Lipkind, Prupis & Petigrow v Gilbertson (1991, US) 115 L Ed 2d 321, 111 S Ct 2773.]

The Supreme Court also held that (1) a knowingly false statement in a proxy solicitation, even though conclusory in form, was actionable pursuant to the implied private right of action under § 14(a) of the Act (15 USCS § 78n(a)) as implemented by SEC Rule 14a-9; but (2) causation of damages compensable through the implied private right of action under § 14(a) could not be demonstrated by a member of a class of minority shareholders whose votes were not required by law or corporate bylaw to authorize the transaction giving rise to the claim. [Virginia Bankshares, Inc. v Sandberg (1991, US) 115 L Ed 2d 929, 111 S Ct 2749.]

In a unanimous decision involving investment company regulation, the Supreme Court held that, in a shareholder's derivative action founded upon the Investment Company Act of 1940 (15 USCS §§ 80a-1 et seq.), a federal court was required to apply state law as to the futility exception to the requirement of a precomplaint demand on a company's board of directors. [Kamen v Kemper Financial Services, Inc. (1991, US) 114 L Ed 2d 152, 111 S Ct 1711.]

See Gilmer v Interstate/Johnson Lane Corp. (1991, US) 114 L Ed 2d 26, 111 S Ct 1647, infra § 26, in which it was held that a claim under the Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) could be subjected, under the Federal Arbitration Act (9 USCS §§ 1 et seq.), to compulsory arbitration pursuant to an arbitration agreement in a stock exchange's securities registration application.

§ 59. Self-incrimination

It was held that a police officer's reinitiation of custodial interrogation of an accused without counsel present, after the accused had requested and consulted with counsel, violated the protections afforded by the rule of Edwards v Arizona (1981) 451 US 477, 68 L Ed 2d 378, 101 S Ct 1880, as to the privilege under the Federal Constitution's Fifth Amendment against self-incrimination. [Minnick v Mississippi (1990, US) 112 L Ed 2d 489, 111 S Ct 486.]

§ 60. Sentencing—generally

The supervised release requirements of § 1002 of the Anti-Drug Abuse Act of 1986 (ADAA) (21 USCS § 841(b)(1)(A))—which mandates postconfinement terms of supervised release for certain drug offenses—were held by the Supreme Court to apply to all offenses specified by § 1002 that were committed between the October 27, 1986 enactment of the ADAA and the November 1, 1987 effective date of the Sentencing Reform Act of 1984 (18 USCS §§ 3551 et seq.). [Gozlon-Peretz v United States (1991, US) 112 L Ed 2d 919, 111 S Ct 840.]

The court held, with respect to an accused who pleaded not guilty on a charge of attempting to kill a deputy United States marshal in violation of 18 USCS § 1114, that the accused's statement at the plea hearing was not a stipulation which "specifically established," within the meaning of § 1B1.2(a) of the Federal Sentencing Guidelines (18 USCS Appx), that the accused had violated § 1114. [Braxton v United States (1991, US) 114 L Ed 2d 385, 111 S Ct 1854.]

In another case involving the Federal Sentencing Guidelines, a closely divided Supreme Court held that a Federal District Court was required, before departing upward on its own motion from the sentencing range established by the Guidelines, to give the parties reasonable notice that such action was being contemplated. [Burns v United States (1991, US) 115 L Ed 2d 123, 111 S Ct 2182.]

The court also held that (1) 21 USCS § 841(b)(1)(B)(v) required that the weight of a carrier medium containing lysergic acid diethylamide (LSD) be included when determining the appropriate sentence for trafficking in LSD, and (2) that such requirement was not unconstitutional. [Chapman v United States (1991, US) 114 L Ed 2d 524, 111 S Ct 1919.]

§ 61. —Life imprisonment for drug offense

The court held that an accused's claim that his sentence to a mandatory term of life in prison without possibility of parole, for possessing 672 grams of cocaine, constituted cruel and unusual punishment in violation of the Eighth Amendment on the ground that the mandatory nature of the sentence allowed the sentencer no opportunity to consider mitigating factors, was without merit. [Harmelin v Michigan (1991, US) 115 L Ed 2d 836, 111 S Ct 2680.]

§ 62. —Death penalty

It was held that there was no per se bar, under the Federal Constitution's Eighth Amendment, either (1) prohibiting a capital sentencing jury from considering victim impact evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family, or (2) precluding a prosecutor from arguing such evidence at a capital sentencing hearing. [Payne v Tennessee (1991, US) 115 L Ed 2d 720, 111 S Ct 2597.]

The Supreme Court held that a trial court's limiting instruction, which instruction defined certain terms of the "especially heinous, atrocious, or cruel" aggravating factor in the Mississippi death penalty statute, was not constitutionally sufficient. [Shell v Mississippi (1990, US) 112 L Ed 2d 1, 111 S Ct 313.]

By a 5-4 vote, it was held that a state court's imposition of the death penalty, after notice that the prosecuting attorney would not recommend it, violated the due process clause of the Federal Constitution's Fourteenth Amendment because of insufficient notice that such a penalty might be imposed. [Lankford v Idaho (1991, US) 114 L Ed 2d 173, 111 S Ct 1723.]

Also by a closely divided Supreme Court, it was held that a Florida appellate court's affirmance of a death sentence was invalid, where the appellate court (1) incorrectly determined that the trial court found no mitigating circumstances, and thus (2) failed to consider evidence of nonstatutory mitigating circumstances. [Parker v Dugger (1991, US) 112 L Ed 2d 812, 111 S Ct 731.]

See Coleman v Thompson (1991, US) 115 L Ed 2d 640, 111 S Ct 2546, supra § 34, in which the court held that a Virginia court's three-sentence order provided an explicit dismissal, on state procedural default grounds, which was sufficient to bar a subsequent federal habeas corpus review of an accused's claims in a capital case.

See also Schad v Arizona (1991, US) 115 L Ed 2d 555, 111 S Ct 2491, supra § 38, in which it was held that (1) jury instructions with respect to a murder charge which did not require agreement on premeditation or felony-murder theories were not unconstitutional; and (2) a capital defendant was not entitled to instructions on all lesser included offenses.

Moreover, see Mu'Min v Virginia (1991, US) 114 L Ed 2d 493, 111 S Ct 1899, supra § 39, where the Supreme Court held that a capital defendant's constitutional rights were not violated by the refusal of a state trial judge to question prospective jurors about news reports to which they had been exposed concerning the defendant.

§ 63. Separation or delegation of powers

The court held that 21 USCS § 811(h), which permits the temporary expedited designation of a controlled substance by the United States Attorney General, was not unconstitutional as an improper delegation of legislative authority. [Touby v United States (1991, US) 114 L Ed 2d 219, 111 S Ct 1752.]

In another case involving federal legislation, it was held that 26 USCS § 7443A, under which the Chief Judge of the United States Tax Court is authorized to appoint special trial judges to hear certain specified proceedings, as well as any other proceeding which the Chief Judge may designate, did not violate the structure of separation of powers which was embodied in the Federal Constitution's appointments clause (Art II, § 2, cl 2). [Freytag v Commissioner (1991, US) 115 L Ed 2d 764, 111 S Ct 2631.]

However, Congress was held by the Supreme Court to have violated the Federal Constitution's separation-of-powers principle in conditioning the transfer of control of airports in the Washington, D.C. area from the federal Department of Transportation to an airport authority which was established by a compact between the District of Columbia and the Commonwealth of Virginia upon the creation, under 49 USCS Appx § 2456, of a review board with veto authority consisting of members of Congress. [Metropolitan Washington Airports Authority v Citizens for Abatement of AirCraft Noise, Inc. (1991, US) 115 L Ed 2d 236, 111 S Ct 2298.]

§ 64. State boundaries and water rights

The Supreme Court, in an original action, held that the boundary between Illinois and Kentucky is the low-water mark on the northerly side of the Ohio River as it existed in 1792. [Illinois v Kentucky (1991, US) 114 L Ed 2d 420, 111 S Ct 1877.]

In an original action by Oklahoma and Texas against New Mexico involving the interpretation of the Canadian River Compact, the Supreme Court ruled that exceptions to a Special Master's report would be sustained in part and overruled in part. [Oklahoma v New Mexico (1991, US) 115 L Ed 2d 207, 111 S Ct 2281.]

§ 65. State taxation

The Supreme Court held that Arkansas did not violate the Federal Constitution's First Amendment by (1) extending a generally applicable sales tax to cable and satellite television services, or to cable television services alone, while (2) exempting the print media from the tax. [Leathers v Medlock (1991, US) 113 L Ed 2d 494, 111 S Ct 1438.]

It was held that the apportionment formula for the in-state "value added" subject to Michigan's value added, single business tax did not violate either (1) the Federal Constitution's commerce clause (Art I, § 8, cl 3), or (2) the due process clause of the Constitution's Fourteenth Amendment. [Trinova Corp. v Michigan Dept. of Treasury (1991, US) 112 L Ed 2d 884, 111 S Ct 818.]

See Oklahoma Tax Com. v Citizen Band Potawatomi Indian Tribe (1991, US) 112 L Ed 2d 1112, 111 S Ct 905, supra § 35, in which the court held that Oklahoma was empowered to collect taxes on sales of cigarettes to nontribal members on land held in trust for an Indian tribe by the Federal Government.

See also James B. Beam Distilling Co. v Georgia (1991, US) 115 L Ed 2d 481, 111 S Ct 2439, supra § 54, in which the court held that the rule of Bacchus Imports, Ltd. v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049—which decision held that a state statute which imposed a discriminatory tax on imported liquors violated the commerce clause—applied retroactively to litigants in other cases.

§ 66. Subpoenas

It was held that, under Rule 17(c) of the Federal Rules of Criminal Procedure—which provides that a court may quash a subpoena duces tecum issued in connection with a federal criminal investigation if compliance with the subpoena would be unreasonable or oppressive—a Federal Court of Appeals had improperly quashed subpoenas duces tecum that had been issued in connection with a federal grand jury investigation of alleged interstate transportation of obscene materials, where the subpoenas were being challenged on relevancy grounds. [United States v R. Enterprises, Inc. (1991, US) 112 L Ed 2d 795, 111 S Ct 722.]

§ 67. Voting Rights Act

In a unanimous decision, the Supreme Court held that under § 5 of the Voting Rights Act of 1965 (42 USCS § 1973c), (1) a Federal District Court had erred by not enjoining those Louisiana elections for judgeships to which the Attorney General of the United States had interposed objections that were deemed by the District Court to be valid, and (2) the Attorney General's preclearance of state legislation creating new judgeships in some districts did not operate to preclear prior legislation creating other judgeships in the same districts, even though the prior legislation had been incorporated in the subsequent legislation. [Clark v Roemer (1991, US) 114 L Ed 2d 691, 111 S Ct 2096.]

The Supreme Court held that a provision of § 2 of the Voting Rights Act (42 USCS § 1973), which provision prohibits voting procedures which result in a denial or abridgement of the right to vote on account of race, was applicable to Louisiana Supreme Court elections. [Chisom v Roemer (1991, US) 115 L Ed 2d 348, 111 S Ct 2354.]

It was also held that the discriminatory-results provision of § 2 of the Act was applicable to vote-dilution claims regarding the election of trial judges in Texas. [Houston Lawyers' Assn. v Atty. Gen. of Texas (1991, US) 115 L Ed 2d 379, 111 S Ct 2376.]

ANNOTATIONS AND BRIEFS

ROBERT LEE SHELL, Petitioner

v

MISSISSIPPI

Reported in this volume: p 1, supra.

Holding: Trial court's limiting instruction, defining "especially heinous, atrocious, or cruel" aggravating factor in Mississippi death penalty statute, held not constitutionally sufficient.

BILLY J. TEMPLE, Petitioner

v

SYNTHES CORPORATION, LTD.

Reported in this volume: p 263, supra.

Holding: Federal District Court's dismissal of products liability diversity suit for failure to join potential joint tortfeasors held erroneous, under Rule 19 of Federal Rules of Civil Procedure.

MERCEDEL W. MILES, individually and as administratrix of the succession of LUDWICK ADAM TORREGANO, Petitioner

v

APEX MARINE CORPORATION et al.

Reported in this volume: p 275, supra.

Holding: In general maritime action for seaman's wrongful death, damages held not available for loss of society or for seaman's lost future earnings.

BRIEFS AND APPEARANCES OF COUNSEL

Allain F. Hardin, of New Orleans, Louisiana, argued the cause and, with **A. Remy Fransen, Jr.,** also of New Orleans, Louisiana, filed briefs for petitioner:

The Jones Act does not foreclose seamen's remedies under the General Maritime Law.

Gerard T. Gelpi, of New Orleans, Louisiana, argued the cause and, with **Randall C. Coleman, III** and **C. Gordon Starling, Jr.,** both also of New Orleans, Louisiana, and **Graydon S. Staring,** of San Francisco, California, filed a brief for respondents:

This court's decision should advance its longstanding policy of integrating the judge-made law with the statute by which Congress occupied the field of seamen's injuries and deaths.

There is no survival action for loss of a seaman's future earnings.

Damages for loss of society cannot be recovered by nondependents.

TOMMY CAGE, Petitioner

v

LOUISIANA

Reported in this volume: p 339, supra.

Holding: Instruction in Louisiana homicide trial defining "reasonable doubt" in terms of "grave" or "substantial" uncertainty and of need for "moral certainty" held to violate due process clause.

R. DOBIE LANGENKAMP, Successor Trustee of the Bankruptcy Estates of REPUBLIC TRUST & SAVINGS COMPANY and REPUBLIC FINANCIAL CORPORATION, Petitioner

v

C. A. CULP, et al.

Reported in this volume: p 343, supra.

Holding: Creditors who have filed claims against bankruptcy estate held not entitled to jury trial under Seventh Amendment when sued by bankruptcy trustee to recover allegedly preferential monetary transfers.

JAY PALMER et al., Petitioners

v

BRG OF GEORGIA, INC., et al.

Reported in this volume: p 349, supra.

Holding: Agreement by two providers of bar review courses, which agreement contained mutual covenants not to compete in other provider's market, held violative of § 1 of Sherman Act (15 USCS § 1).

BRIEFS OF COUNSEL

FMC CORPORATION, Petitioner

v

CYNTHIA ANN HOLLIDAY

Reported in this volume: p 356, supra.

Holding: Application of state statute, prohibiting exercise of subrogation rights on tort recovery, to employee welfare benefit plan held pre-empted by ERISA (29 USCS §§ 1001 et seq.).

BRIEFS AND APPEARANCES OF COUNSEL

H. Woodruff Turner, of Pittsburgh, Pennsylvania, argued the cause and, with **Charles Kelly** and **Patrick J. McElhinny,** both also of Pittsburgh, Pennsylvania, and **W. Ronald Cooper,** of Chicago, Illinois, filed briefs for petitioner:

Section 514 of ERISA pre-empts direct state regulation of self-funded employee benefit plans.

Deputy Solicitor General **David L. Shapiro,** of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr** and **Christopher J. Wright,** both also of the Department of Justice, Washington, D.C., and **Robert P. Davis, Allen H. Feldman, Steven J. Mandel,** and **Mark S. Flynn,** all of the Department of Labor, Washington, D.C., filed a brief for the United States as amicus curiae urging reversal:

ERISA's "deemer clause" prohibits state regulation of uninsured employee benefit plans.

Charles Rothfeld, of Washington, D.C., argued the cause and, with **Thomas G. Johnson** and **David A. Cicola,** both of Indiana, Pennsylvania, filed a brief for respondent:

The Employee Retirement Income Act of 1974 does not pre-empt the Pennsylvania Motor Vehicle Financial Responsibility Law of 1984.

Reversal of the lower court's decision will not further the aims of ERISA.

Anita M. D'Arcy, James L. Coghlan, Stephen J. Harris, and **William J. Nellis** filed a brief for the Central States, Southeast and Southwest Area Health and Welfare Fund as amicus curiae urging reversal; **Harry A. Rissetto, E. Carl Uehlein, Jr., Margery Sinder Friedman, Larissa Omelchenko Taran, Stephen A. Bokat,** and **Mona C. Zeiberg** filed a brief for the Chamber of Commerce of the United States of America as amicus curiae urging reversal; **Gerald M. Feder, David R. Levin,** and **Diana L. S. Peters** filed a brief for the National Coordinating Committee for Multiemployer Plans as amicus curiae urging reversal; **James D. Crawford, James J. Leyden, Frank C. Sabatino, Henry M. Wick, Jr.,**

and **Jack G. Mancuso** filed a brief for the Teamsters Health and Welfare Fund of Philadelphia & Vicinity, et al. as amici curiae urging reversal; and **A. Raymond Randolph, Susan Katz Hoffman, M. Duncan Grant, Waltraut S. Addy,** and **Susan K. Lessack** filed a brief for the Travelers Insurance Company as amicus curiae urging reversal.

George P. McAndrews, Robert C. Rynam, and **Priscilla F. Gallagher** filed a brief for the American Chiropractic Association as amicus curiae urging affirmance; **Ellis Lyons, Bennett Boskey,** and **Edward A. Groobert** filed a brief for the American Optometric Association as amicus curiae urging affirmance; **Benna Ruth Solomon** and **Charles Rothfeld** filed a brief for the National Conference of State Legislatures, et al. as amici curiae urging affirmance; and **John Patrick Lydon** filed a brief for the Pennsylvania Trial Lawyers Association as amicus curiae urging affirmance.

Werner Strupp and **Robert J. Strupp** filed a brief for the American Podiatric Medical Association as amicus curiae; and **George J. Pantos** filed a brief for the Self-Insurance Institute of America, Inc. as amicus curiae.

ARCADIA, OHIO, et al., Petitioners

v

OHIO POWER COMPANY et al.

Reported in this volume: p 374, supra.

Holding: FERC order disapproving coal charges that had allegedly been approved by SEC held not pre-empted under conflict-of-jurisdiction provisions of § 318 of Federal Power Act (16 USCS § 825q).

BRIEFS AND APPEARANCES OF COUNSEL

Carter G. Phillips, of Washington, D.C., argued the cause and, with **Rex E. Lee, Gene C. Schaerr, Michael D. Warden, Jeffrey T. Green, Gregg D. Ottinger,** and **John P. Williams,** all also of Washington, D.C., filed briefs for petitioners:

Congress clearly did not intend to prevent the FERC from regulating interstate wholesale electric rates absent an actual conflict with a requirement of the Public Utility Holding Company Act of the SEC.

Even if Congress' intent was not clear, the FERC's interpretation is a permissible reading of its own organic statute.

The decision below cannot be affirmed on the alternative ground that the FERC's decision is inconsistent with its own regulation.

Deputy Solicitor General **Lawrence G. Wallace,** of the Department of Justice, Washington, D.C., argued the cause and, with Acting Solicitor General **John G. Roberts, Jr.** and **James A. Feldman,** both also of the Department of Justice, Washington, D.C., and **William S. Scherman, Jerome M. Feit, Joseph S. Davies,** and **Timm L. Abendroth,** all of the Federal Energy Regulatory Commission, Washington, D.C., and **Daniel L. Goelzer,** of the Securities and Exchange Commission, Washington, D.C., filed a brief for respondent Federal Energy Regulatory Commission under Supreme Court Rule 12.2:

Section 318 of the Federal Power Act ousts FERC of its authority under that Act only when the exercise of that authority actually conflicts with action taken by the SEC in its enforcement of the Public Utility Holding Company Act.

Edward Berlin, of Washington, D.C., argued the cause and, with **Kenneth G. Jaffe,** also of Washington, D.C., and **A. Joseph Dowd, John F. DiLorenzo, Jr.,** and **Edward J. Brady,** all of Columbus, Ohio, filed a brief for respondent Ohio Power Company:

Since neither petitioners nor the FERC defends the interpretation that the FERC gave to § 318, no issue regarding the application of Chevron is raised.

The Court of Appeals correctly held that § 318 prohibits the FERC's prescription of a market test for a transaction subject to the cost standard specified in § 13(b) of the PUHCA and in the implementing SEC regulations and orders.

If it is necessary to reach the other flaws in the FERC's decision, the case should be remanded to the Court of Appeals.

T. D. Kauffelt, of Charleston, West Virginia, filed a brief for respondent LCP Chemicals, Inc., et al.

Scott Hempling, Alan H. Richardson, and **Charles A. Acquard** filed a brief for the American Public Power Association, et al. as amici curiae urging reversal; and **James N. Horwood, Thomas C. Trauger, P. Daniel Bruner,** and **James R. McClarnon** filed a brief for the Indiana Municipal Power Agency as amicus curiae urging reversal.

James B. Liberman filed a brief for the Registered Holding Company Group as amicus curiae urging affirmance.

SHIRLEY W. IRWIN, Petitioner

v

DEPARTMENT OF VETERANS AFFAIRS, et al.

Reported in this volume: p 435, supra.

Holding: Suit against VA under Title VII of Civil Rights Act of 1964 held untimely, where suit was filed more than 30 days after notice from EEOC was received at office of attorney who was allegedly absent.

BRIEFS AND APPEARANCES OF COUNSEL

Jon R. Ker, of Hewitt, Texas, by appointment of the court, 494 US 1025, 108 L Ed 2d 606, 110 S Ct 1468, argued the cause and, with **Brian Serr,** filed briefs for petitioner.

Deputy Solicitor General **John G. Roberts, Jr.,** of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General

Kenneth W. Starr, Assistant Attorney General **Stuart M. Gerson,** and **Harriet S. Shapiro,** all also of the Department of Justice, Washington, D.C. filed a brief for respondents.

Gregory O'Duden, Elaine Kaplan, and **Kerry L. Adams** filed a brief for the National Treasury Employees Union as amicus curiae urging reversal.

RAYMOND J. MOSKAL, SR., Petitioner
v
UNITED STATES

Reported in this volume: p 449, supra.

Holding: Genuine motor vehicle titles, received by person who knew that such titles incorporated fraudulently tendered odometer readings, held to have been "falsely made" within meaning of 18 USCS § 2314.

BRIEFS AND APPEARANCES OF COUNSEL

Dennis M. Hart, of Washington, D.C., argued the cause and filed briefs for petitioner:

The conduct of the petitioner in receiving the Virginia titles was not a violation of 18 USC 2314 (18 USCS § 2314).

Stephen L. Nightingale of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Edward S. G. Dennis, Jr.,** Deputy Solicitor General **William C. Bryson, Christine Desan Husson,** and **Joel M. Gershowitz,** all also of the Department of Justice, Washington, D.C., filed a brief for respondent:

An automobile title is "falsely made" within the meaning of § 2314 if false information was inserted into it at the time of its making.

INGERSOLL-RAND COMPANY, Petitioner
v
PERRY McCLENDON

Reported in this volume: p 474, supra.

Holding: State common-law claim of wrongful discharge to prevent attainment of benefits under pension plan held pre-empted by ERISA (29 USCS §§ 1001 et seq.).

BRIEFS AND APPEARANCES OF COUNSEL

Hollis T. Hurd, of Pittsburgh, Pennsylvania, argued the cause and, with

Glen D. Nager, of Washington, D.C., and **William T. Little,** of Houston, Texas, filed briefs for petitioner:

ERISA pre-empts a state common-law claim that an employer has discharged an employee in order to interfere with attainment of benefits under an ERISA-covered plan.

Christopher J. Wright, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr** and Deputy Solicitor General **David L. Shapiro,** both also of the Department of Justice, Washington, D.C., and **Robert P. Davis, Allen H. Feldman,** and **Nathaniel I. Spiller,** all of the Department of Labor, Washington, D.C., filed a brief for the United States as amicus curiae urging reversal:

ERISA pre-empts state-law claims alleging that an employer discharged an employee in order to interfere with the attainment of employee benefits.

John W. Tavormina, of Houston, Texas, argued the cause and, with **Michael Y. Saunders** and **Carl D. Kulhanek, Jr.,** both also of Houston, Texas, filed a brief for respondent:

Individual states, and not federal law, have traditionally regulated and governed the law regarding termination of employment relationships.

Both ERISA and ERISA's pre-emption provision do not apply to the case before the court.

The petitioner has not met and cannot meet any of the pre-emption tests articulated by the court.

Zachary D. Fasman, Jeffrey M. Hain, Stephen A. Bokat, and **Mona C. Zeiberg** filed a brief for the Chamber of Commerce of the United States of America, et al. as amici curiae urging reversal; **Robert E. Williams, Douglas S. McDowell, Ann Elizabeth Reesman,** and **W. Carl Jordan** filed a brief for the Equal Employment Advisory Council, et al. as amici curiae urging reversal; and **Daniel J. Popeo, Richard A. Samp,** and **John Scully** filed a brief for the Washington Legal Foundation as amicus curiae urging reversal.

Jeffrey Lewis, Janet Bond Arterton, and **Markus L. Penzel** filed a brief for the National Employment Lawyers Association, et al. as amici curiae urging affirmance; **Charles Rothfeld** and **Benna Ruth Solomon** filed a brief for the National Governors' Association, et al. as amici curiae urging affirmance; and **Thomas L. Bright** filed a brief pro se as amicus curiae urging affirmance.

ROBERT S. MINNICK, Petitioner

v

MISSISSIPPI

Reported in this volume: p 489, supra.

Holding: Police officer's reinitiation of custodial interrogation of accused without counsel present, after accused had requested and consulted with counsel, held to violate Fifth Amendment protections.

BRIEFS AND APPEARANCES OF COUNSEL

Floyd Abrams, of New York City, argued the cause and, with **Anthony Paduano,** also of New York City, and **Clive A. Stafford Smith,** of Atlanta, Georgia, filed briefs for petitioner.

Marvin L. White, Jr., Assistant Attorney General of Mississippi, of Jackson, Mississippi, argued the cause and, with **Mike Moore,** Attorney General, also of Jackson, Mississippi, filed a brief for respondent.

David W. DeBruin and **Donald B. Verrilli, Jr.** filed a brief for the Mississippi State Bar as amicus curiae urging reversal.

Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Edward S. G. Dennis, Jr.,** Deputy Solicitor General **William C. Bryson,** and **Nina Goodman** filed a brief for the United States as amicus curiae urging affirmance.

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771,
INTERNATIONAL UNION UAW, Petitioners
v
RING SCREW WORKS, FERNDALE FASTENER DIVISION

Reported in this volume: p 508, supra.

Holding: Collective bargaining agreements that were silent as to judicial remedies held not to bar parties' recourse to courts under 29 USCS § 185 upon failure of voluntary grievance procedures.

BRIEFS AND APPEARANCES OF COUNSEL

Laurence Gold, of Washington, D.C., argued the cause and, with **Jordan Rossen,** of Detroit, Michigan, and **George Kaufmann,** filed briefs for petitioners.

Terence V. Page, of Birmingham, Michigan, argued the cause and, with **Richard M. Tuyn,** also of Birmingham, Michigan, filed a brief for respondent.

Robert S. Conrad filed a brief for the Chamber of Commerce of the United States as amicus curiae urging affirmance; and **James D. Holzhauer, Stephen M. Shapiro, William H. Crabtree,** and **Edward P. Good** filed a brief for Motor Vehicles Manufacturers Association of the United States, Inc. as amicus curiae urging affirmance.

IN RE MICHAEL SINDRAM, Petitioner

Reported in this volume: p 599, supra.

Holding: Person whose numerous petitions and motions had been unanimously rejected by Supreme Court, denied leave to proceed in forma pauperis on new petition or on any further petitions for extraordinary writs.

RICHARD DEMAREST, Petitioner

v

JAMES MANSPEAKER et al.

Reported in this volume: p 608, supra.

Holding: Witness attendance fees held payable under 28 USCS § 1821 to convicted state prisoner who testified at federal trial pursuant to writ of habeas corpus ad testificandum.

BRIEFS AND APPEARANCES OF COUNSEL

James E. Scarboro, of Denver, Colorado, by appointment of the court, 495 US 928, 109 L Ed 2d 495, 112 S Ct 2199, argued the cause and, with **Alfred T. McDonnell** and **David C. Warren,** both also of Denver, Colorado, filed briefs for petitioner:

The court below erred in looking beyond the clear and unambiguous language of the statute.

The legislative history of § 1821 is inconclusive and cannot support the government's construction of the statute.

Contrary judicial and administrative interpretations cannot alter the express language of § 1821.

The speculative policy concerns of the court below cannot justify its amendment of the statute.

Michael R. Lazerwitz, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Acting Assistant Attorney General **John C. Keeney,** Deputy Solicitor General **William C. Bryson,** and **Thomas M. Gannon,** all also of the Department of Justice, Washington, D.C., filed a brief for respondents:

The petitioner is not entitled to witness fees under the federal witness fee statute.

JOHN L. CHEEK, Petitioner

v

UNITED STATES

Reported in this volume: p 617, supra.

Holding: Instructions as to willfulness under 26 USCS §§ 7201 and 7203, that jury should disregard criminal defendant's asserted beliefs that wages are not income and that he was not taxpayer within meaning of Internal Revenue Code, held erroneous.

BRIEFS AND APPEARANCES OF COUNSEL

William R. Coulson, of Chicago, Illinois, argued the cause and, with **Susan M. Keegan,** also of Chicago, Illinois, filed briefs for the petitioner:

The Seventh Circuit's Buckner-Cheek Rule cannot be reconciled with this court's longstanding construction of the relevant statutes.

The Seventh Circuit's unique Buckner-Cheek Rule is as unnecessary as it is unfair.

Edwin S. Kneedler, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Shirley D. Peterson,** Deputy Solicitor General **William C. Bryson, Robert E. Lindsay,** and **Alan Hechtkoff,** all also of the Department of Justice, Washington, D.C., filed a brief for respondent:

A taxpayer acts "willfully" if he is aware of the requirements of the tax code but refuses to accept them based on a theory that is objectively unreasonable or a belief that the requirements are unconstitutional.

The requirement that petitioner's belief as to the lawfulness of his conduct be objectively reasonable does not violate his constitutional rights.

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC., et al., Petitioners

v

UNITED DISTRIBUTION COMPANIES, et al. (No. 89-1452)

FEDERAL ENERGY REGULATORY COMMISSION, Petitioner

v

UNITED DISTRIBUTION COMPANIES, et al. (No. 89-1453)

Reported in this volume: p 636, supra.

Holding: FERC held (1) to have authority, with respect to natural gas already produced, both to set single ceiling price and to preauthorize service abandonment by producers, and (2) to have no duty, in particular rule-making proceeding, to rule on "take-or-pay" contracts.

BRIEFS AND APPEARANCES OF COUNSEL

Rex E. Lee, of Washington, D.C, argued the cause and, with **Harry E. Barsh, Jr., Charles M. Darling, IV, Eugene R. Elrod, David J. Evans, R. Gordon Gooch, Jeffrey T. Green, Stephen A. Herman, John K. McDonald, David G. Norrell, Carter G. Phillips, Robert C. Platt, Daniel John Regan, Jr., Gene C. Schaerr,** and **Stephen L. Teichler,** all also of Washington, D.C., **Robert A. Miller,** of Lakewood, Colorado, **William H. Emerson,** of Chicago, Illinois, **Luke A. Mickum, Larry Pain,** and **John L. Williford,** all of Bartlesville, Oklahoma, **Michael L. Pate,** of

Tulsa, Oklahoma, **Gerald M. Bendo, Thomas B. Deal, Toni D. Hennike, Kathleen E. Magruder, Norma J. Rosner, Harris S. Wood,** and **John J. Wolfe,** all of Dallas, Texas, **Kerry R. Brittain** and **Alan W. Tomme,** both of Fort Worth, Texas, and **Ernest J. Altget, III, Brian J. Bell, Gary J. Celestino, John B. Chapman, Mario M. Garza, Gene Ann Herrin, C. Roger Hoffman, Timothy Jacquet, Thomas G. Johnson, Ernest L. Kuboshi, Jay G. Martin, Charles J. McClees, Jr., Sylvia McCormack, Robert C. Murray, Ralph J. Pearson, Douglas W. Rasch, Dee H. Richardson, Brock G. Ridgeway, James A. Ruoff,** and **Gerald P. Thurmond,** all of Houston, Texas, filed briefs for petitioners in No. 89-1452:

The Federal Energy Regulatory Commission has ample statutory authority to increase old gas ceiling prices as it did in Order No. 451.

The FERC has ample authority under § 7(b) of the Natural Gas Act (NGA) to permit abandonments generically, without case-by-case adjudication.

FERC need not resolve the take-or-pay issue as a precondition to its efforts to resolve the problem of old gas pricing.

Edwin S. Kneedler, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr** and Deputy Solicitor General **Lawrence G. Wallace,** both also of the Department of Justice, Washington, D.C., and **William S. Scherman, Jerome M. Feit,** and **Robert H. Solomon,** all of the Federal Energy Regulatory Commission, Washington, D.C., filed briefs for petitioners in No. 89-1453:

The alternative price ceiling in Order No. 451 is fully consistent with the "just and reasonable" standard incorporation into §§ 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 (NGPA).

The Commission was authorized by § 7(b) of the Natural Gas Act to specify in Order No. 451 the circumstances under which future abandonment of gas service is permitted.

The Commission was not required to implement a comprehensive solution to the "take-or-pay" problem in connection with Order No. 451 before raising the ceiling price for old gas.

Congress' enactment of the Wellhead Decontrol Act confirms the soundness of Order No. 451.

Roberta Lee Halladay, of Washington, D.C., argued the cause and, with **Peter Buscemi** and **Andrew D. Leipold,** both also of Washington, D.C., **Ronald D. Jones,** of New York City, and **C. William Cooper,** of Sewickley, Pennsylvania, filed a brief for respondents in both cases:

The new pricing structure adopted by the Commission in Order No. 451 is inconsistent with the regulatory scheme enacted by Congress in the NGPA.

Even if viewed solely from the perspective of the "just and reasonable" provisions in §§ 104c(b)(2) and 106(c), Order No. 451 cannot stand.

The automatic abandonment provisions of Order No. 451 violates § 7(b) of the NGA.

The Court of Appeals correctly determined that Orders No. 451 and No. 451-A were flawed because they exacerbated the problem of high-cost take-or-pay provisions.

Hal Stratton, Attorney General of New Mexico, **Randall W. Childress,**

Deputy Attorney General, **Craig Hulvey, Kevin M. Sweeney,** and **George C. Garikes** and the following attorneys for their respective jurisdictions filed a brief for the state of New Mexico, et al. as amici curiae urging reversal: **Jim Mattox,** Attorney General of Texas, **Buddy Roemer,** Governor of Louisiana, **Ron Gomez,** and **William J. Guste,** Attorney General, **J. Patrick Batchelor, David B. Robinson, Andrew S. Newman, Robert H. Henry,** Attorney General of Oklahoma, and **Joseph B. Meyer,** Attorney General of Wyoming; **Robert J. Woody, Richard G. Morgan, Brian T. O'Reilly, R. David Ballenger, Philip F. Patman, W. Timothy Dowd,** and **Richard C. Byrd** filed a brief for Interstate Oil Compact Commission as amicus curiae urging reversal; and **Daniel J. Popeo, Richard A. Samp, R. Charles Gentry,** and **John R. Hays, Jr.** filed a brief for the Washington Legal Foundation as amicus curiae urging reversal.

IN RE VIVIAN BERGER, Petitioner

Reported in this volume: p 710, supra.

Holding: Appointed counsel representing capital defendant before United States Supreme Court granted $5,000 in fees.

BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA, Petitioner

v

ROBERT L. DOWELL et al.

Reported in this volume: p 715, supra.

Holding: Federal Court of Appeals held to have applied overly stringent standard in determining whether to dissolve prior injunctive decree imposing desegregation plan for Oklahoma City's public schools.

BRIEFS AND APPEARANCES OF COUNSEL

Ronald L. Day, of Oklahoma City, Oklahoma, argued the cause and, with **Laurie W. Jones,** also of Oklahoma City, Oklahoma, and **Charles J. Cooper,** filed briefs for petitioner:

When unitary status is achieved, the remedial decree should be lifted, and school authorities should be free from all further judicial control in the absence of a showing that they subsequently acted with intent to discriminate.

The Court of Appeals' reassessment of the evidence, and the characterization of the trial court's findings of fact as clearly erroneous, exceed the confines of Federal Rules of Civil Procedure Rule 52(a).

Solicitor General **Kenneth W. Starr,** of the Department of Justice, Washington, D.C., argued the cause and, with Assistant Attorney General **John R. Dunne,** Deputy Solicitor General **John G. Roberts, Jr.,** Deputy Assistant Attorney General **Roger Clegg, Lawrence S. Robbins, David K. Flynn,** and **Mark L. Gross,** all also of the Department of Justice, Washington, D.C., filed a brief for the United States as amicus curiae urging reversal:

The Court of Appeals applied an erroneous legal standard in deciding whether to terminate the Oklahoma City school desegregation decree.

Julius LeVonne Chambers, of New York City, argued the cause and, with **Charles Stephen Ralston, Norman J. Chachkin,** and **Anthony G. Amsterdam,** all also of New York City, **Lewis Barber, Jr.,** of Oklahoma City, Oklahoma, **Janell M. Byrd,** of Washington, D.C., and **John W. Walker,** of Little Rock, Arkansas, filed a brief for respondents:

School desegregation cases are governed by the equitable principles established by United States v Swift & Co.

Alternatively, a finding of unitariness may terminate the obligation to adjust pupil assignment plans to account for demographic shifts

Alternatively, a system can be "unitary" only upon a finding that it will remain so in the face of any changes in pupil assignment policies.

Rex E. Lee, Carter G. Phillips, Mark D. Hopson, Nancy A. Temple, Gary M. Sams, Charles L. Weatherly, and **J. Stanley Hawkins** filed a brief for the DeKalb County Board of Education as amicus curiae urging reversal; **Elmer Enstrom, Jr.** filed a brief for the Intervenors in Carlin v Board of Education San Diego Unified School District as amicus curiae urging reversal; and **Clint Bolick, Allyson Tucker, Jerald L. Hill, Mark J. Bredemeir, Michael I. Krauss, Gary Lawson, William Mayton, Daniel Polsby, Charles E. Rice, Bernard Siegan, Robert A. Anthony, Thomas C. Arthur, Lillian R. Bevier, Joseph Broadus, Henry Butler, Robert Destro, Stephen J. Eagle, Peter J. Ferrara, Richard D. Freer, Lino A. Graglia, Joseph D. Grano, William F. Harvey, Henry Mark Holzer, Norman Karlin, Harriet M. King,** and **Joerg W. Knipprath** filed a brief for the Landmark Legal Foundation Center for Civil Rights as amicus curiae urging reversal.

Samuel Rabinove, Richard T. Foltin, William B. Duffy, Jr., Ruben Franco, and **Stanley Mark** filed a brief for the American Jewish Committee, et al. as amici curiae urging affirmance; **Paul Vizcarrondo, Jr., Norman Redlich, Stephen R. Neuwirth, Robert F. Mullen, Barbara R. Arnwine, Paul Holtman, John A. Powell, Steven R. Shapiro,** and **Marc. D. Stern** filed a brief for the Lawyers' Committee for Civil Rights under Law, et al. as amici curiae urging affirmance; **David J. Burman, Perkins Coie, William L. Taylor,** and **Susan M. Liss** filed a brief for the National Association for the Advancement of Colored People, et al. as amici curiae urging affirmance; and **Robert H. Chanin** and **Jeremiah A. Collins** filed a brief for the National Education Association as amicus curiae urging affirmance.

David S. Tatel, Walter A. Smith, Jr., Patricia A. Brannan, John W. Borkowski, and **Patricia M. Wright** filed a brief for the Council of the Great City Schools, et al. as amici curiae; and **William Perry Pendley, Gary N. Herbert,** and **Todd S. Welch** filed a brief for Mountain States Legal Foundation as amicus curiae.

FIRSTIER MORTGAGE COMPANY, aka REALBANC, INC., Petitioner

v

INVESTORS MORTGAGE INSURANCE COMPANY

Reported in this volume: p 743, supra.

Holding: Premature notice of appeal filed from Federal District Court's bench ruling held effective notice of appeal, under Federal Rule of Appellate Procedure 4(a)(2), from subsequently entered final judgment.

BRIEFS AND APPEARANCES OF COUNSEL

Jack S. Dawson, of Oklahoma City, Oklahoma, argued the cause and, with **Janice M. Dansby** also of Oklahoma City, Oklahoma, filed briefs for petitioner:

Even if the trial court's announcement was not a final decision, the notice of appeal should have been treated as if filed after entry of the order, since Investors Mortgage Insurance can show no prejudice.

Trial court's memorandum opinion and order did not impliedly overrule implied motions.

John P. Roberts, of Oklahoma City, Oklahoma, argued the cause and, with **Eric S. Gray** and **Gregory F. Pilcher,** both also of Oklahoma City, Oklahoma, filed a brief for respondent:

The January 26, 1989 oral announcement was not a final appealable order because the trial court intended to and did follow the oral announcement with findings of fact and conclusions of law and judgment.

FirsTier's notice of appeal, filed before announcement of a final decision, is premature and ineffective to invoke appellate jurisdiction.

Bankers Trust Co. v Mallis is not applicable because the oral announcement was not a final decision.

COY R. GROGAN, et al., Petitioners

v

FRANK J. GARNER, JR.

Reported in this volume: p 755, supra.

Holding: Standard of proof, in determination of dischargeability of debt in bankruptcy under 11 USCS § 523(a), held to be preponderance of evidence.

BRIEFS AND APPEARANCES OF COUNSEL

Michael J. Gallagher, of Kansas City, Missouri, argued the cause and, with **Glenn A. Jewell** and **J. Michael Dryton,** both also of Kansas City, Missouri, filed briefs for petitioners:

Collateral estoppel may be applied properly in bankruptcy proceedings to determine the nondischargeability of a fraud judgment under § 523(a) of the Bankruptcy Code.

The Eighth Circuit's decision that the exceptions to discharge under Bankruptcy Code § 523(a) require proof by the "clear and convincing evidence" standard is wrong and is not supported by the statutory language or by the legislative history,

The majority of states allow fraud to be proven by "preponderance of the evidence" because certain federal security antifraud actions may be proven by the same standard, an additional burden on judicial resources will result if this court requires exceptions to discharge under § 523(a) to be proven by "clear and convincing evidence".

Deputy Solicitor General **John G. Roberts,** of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr** and **Robert A. Long, Jr.,** both also of the Department of Justice, Washington, D.C., and **James R. Doty, Paul Gonson, Jacob H. Stillman, Richard A. Kirby, Joseph O. Click,** and **Alfred J. T. Byrne,** all of the Federal Deposit Insurance Corporation, Washington, D.C., filed a brief for the United States as amicus curiae urging reversal:

The preponderance of the evidence standard applies in actions under § 523(a) of the Bankruptcy Code to except from discharge debts incurred by fraud.

Application of the clear and convincing evidence standard to the fraud exception to discharge was not a well-established pre-Code bankruptcy practice.

Timothy K. McNamara, of Kansas City, Missouri, argued the cause and, with **Jonathan R. Haden** and **Larry E. Sells,** both also of Kansas City, Missouri, filed a brief for respondent:

The clear and convincing evidence standard of proof applies in actions under § 523(a)(2) of the Bankruptcy Code to except from discharge debts incurred by fraud.

A prior civil judgment of fraud based upon a preponderance standard of proof does not collaterally estop litigation of fraud issues in a § 523(a)(2) proceeding.

UNITED STATES, Petitioner

v

R. ENTERPRISES, INC. et al.

Reported in this volume: p 795, supra.

Holding: Quashing of subpoena duces tecum, issued pursuant to federal grand jury investigation and challenged on relevancy grounds, held erroneous under Rule 17(c) of Federal Rules of Criminal Procedure.

Annotation: p 1237, infra.

BRIEFS AND APPEARANCES OF COUNSEL

Deputy Solicitor General **William C. Bryson,** of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Edward S. G. Dennis, Jr.,** and **Lawrence S. Robbins,** all also of the Department of Justice, Washington, D.C., filed briefs for petitioner:

The Court of Appeals erred in quashing the grand jury subpoenas seeking respondents' corporate records.

Herald Price Fahringer, of New York City, argued the cause and, with **Diarmuid White, Ralph J. Schwarz, Jr.,** and **Richard S. Brown, Jr.,** all also of New York City, filed a brief for respondents:

When a subpoena, seeking records related to activities protected by the First Amendment, is challenged on grounds that the documents sought are not related to the grand jury investigation, the government must make a substantial showing that the records demanded are relevant.

Since the government failed to make any showing of how the subpoenaed records were relevant to the grand jury investigation, the subpoenas were properly quashed under both the Fourth Amendment and Rule 17(c) of the Federal Rules of Criminal Procedure.

Bruce J. Ennis, Jr. and **Ann M. Kappler** filed a brief for Phe, Inc. as amicus curiae urging affirmance.

ANNOTATION

SUPREME COURT'S CONSTRUCTION AND APPLICATION OF RULE 17 OF FEDERAL RULES OF CRIMINAL PROCEDURE, PERTAINING TO SUBPOENAS IN CRIMINAL CASES

by

Gary Knapp, M.B.A., J.D.

I. PRELIMINARY MATTERS

§ 1. Introduction
  [a] Scope

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

21A Am Jur 2d, Criminal Law §§ 717, 719; 23 Am Jur 2d, Depositions and Discovery § 400; 38 Am Jur 2d, Grand Jury §§ 37, 38; 81 Am Jur 2d, Witnesses §§ 9, 10, 12, 13, 14, 22

Annotations: See the related matters listed in the annotation.

8 Federal Procedure, L Ed, Criminal Procedure §§ 22:242, 22:245-22:284, 22:289-22:292; 9 Federal Procedure L Ed, Criminal Procedure § 22:657; 16 Federal Procedure, L Ed, Government Officers and Employees § 40:662

7 Federal Procedural Forms, L Ed, Criminal Procedure §§ 20:450, 20:471-20:482.5

11 Am Jur Pl & Pr Forms (Rev), Federal Criminal Procedure, Forms 151-156

5 Am Jur Trials 27, Pretrial Procedures and Motions in Criminal Cases

USCS Court Rules, Federal Rules of Criminal Procedure, Rule 17

L Ed Digest, Contempt §§ 12, 15, 23; Depositions and Discovery §§ 38, 40-42; Evidence § 419; Grand Jury §§ 4, 5; Witnesses § 4

L Ed Index, Contempt; Grand Jury; Rules of Criminal Procedure; Subpoena; Subpoena Duces Tecum

ALR Index, Contempt; Criminal Procedure Rules; Grand Jury; Production of Documents; Subpoena; Subpoena Duces Tecum

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

Consult POCKET PART in this volume for later case service

- [b] Related matters
- [c] Text of Rule 17

§ 2. Background, summary, and comment
- [a] Generally
- [b] Practice pointers

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§ 3. Issuance of subpoena to nonparty; duty to assist in law enforcement
§ 4. Grand jury's reliance on court for compulsion

III. RULE 17[c]; PRODUCTION OF DOCUMENTARY EVIDENCE AND OF OBJECTS

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§ 5. Presumption of reasonableness
§ 6. Disclosure of general subject of investigation
§ 7. Determination as to unreasonableness or oppressiveness

B. IN PRETRIAL CONTEXT

§ 8. General considerations
- [a] Intent to expedite trials
- [b] Trial court's discretion as to enforcement
- [c] Unreasonableness or oppressiveness as only bases for quashing

§ 9. Materials sought by defendant
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§ 11. Subpoena of witnesses on behalf of indigent defendant
§ 12. Failure to obey subpoena as constituting contempt
- [a] Contempt by nonparty
- [b] Claim of good faith attempt to obey as subject to appraisal by court that hears claim
- [c] Particular findings of contempt; held valid
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I. Preliminary Matters

§ 1. Introduction

[a] Scope

This annotation collects and analyzes the decisions of the United States Supreme Court that have construed or applied any provision of Rule 17 of the Federal Rules of Criminal Procedure, which rule governs the procedures with respect to subpoenas issued in connection with federal criminal proceedings.[1]

[b] Related matters

Accused's right, under Federal Constitution's Sixth Amendment, to compulsory process for obtaining witnesses in accused's favor—Supreme Court cases. 98 L Ed 2d 1074.

Government's privilege to withhold disclosure of identity of informer—federal cases. 1 L Ed 2d 1998.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records—modern status. 87 ALR Fed 177.

Constitutional right to counsel as ground for quashing or modifying federal grand jury subpoena directed to attorney. 83 ALR Fed 504.

Requirements, under Rule 45(c) of Federal Rules of Civil Procedure and Rule 17(d) of Federal Rules of Criminal Procedure, relating to service of subpoena and tender of witness fees and mileage allowance. 77 ALR Fed 863.

Authority of federal grand jury to subpoena documents of state or local agency. 64 ALR Fed 901.

Right of indigent defendant under Rule 17(b) of the Federal Rules of Criminal Procedure to appearance of witnesses necessary to adequate defense. 42 ALR Fed 233.

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[1] Being limited to Supreme Court cases which have construed or applied Rule 17, this annotation does not include cases which have merely cited, quoted, or paraphrased Rule 17 without construing it and without determining whether or how it applies to particular circumstances, nor does this annotation include cases which have involved a subpoena issued in connection with a federal criminal proceeding, but which have not referred expressly to Rule 17. For the text of Rule 17, see § 1[c], infra.

Availability under Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings of subpoena duces tecum. 7 ALR4th 836.

Power of court to control evidence or witnesses going before grand jury. 52 ALR3d 1316.

Subpoena duces tecum for production of items held by a foreign custodian in another country. 82 ALR2d 1403.

Statements of parties or witnesses as subject of pretrial or other disclosure, production, or inspection. 73 ALR2d 12.

Form, particularity, and manner of designation required in subpoena duces tecum for production of corporate books, records, and documents. 23 ALR2d 862.

◆

Rhodes, Orfield's Criminal Procedure Under the Federal Rules, 2d ed.

Torcia, Wharton's Criminal Procedure, 13th ed.

[c] Text of Rule 17

The text of Rule 17 of the Federal Rules of Criminal Procedure provides as follows:

Rule 17. Subpoena

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United States magistrate in a proceeding before that magistrate, but it need not be under the seal of the court.

(b) Defendants Unable to Pay. The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by the marshal, by a deputy marshal or by any other person who is a not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.

(e) Place of Service. *(1) In United States.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.

(2) Abroad. A subpoena directed to a witness in a foreign country shall issue under the circumstances and in

the manner and be served as provided in Title 28, USC § 1783.

(f) For Taking Deposition; Place of Examination. *(1) Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate.

(h) Information not Subject to Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 26.2.

§ 2. Background, summary, and comment

[a] Generally

Rule 17 of the Federal Rules of Criminal Procedure, which rule governs procedures concerning subpoenas that are issued in federal criminal cases, became effective on March 21, 1946.[2] Since that time, the United States Supreme Court has been called upon in a number of cases to construe or apply Rule 17. From the Supreme Court's opinions in these cases, the general principles have emerged that (1) in consideration of the fact that Rule 17 is based at least partially on the view that citizens have a duty to assist in law enforcement, the rule contemplates that Federal District Courts have the power to issue subpoenas and subpoenas duces tecum to nonparty witnesses (§ 3, infra); and (2) a federal grand jury seeking either the production of books, papers, or documents, or the testimony of witnesses, must rely on a court to compel such production or testimony under Rule 17 (§ 4, infra).

Many of the questions on which the Supreme Court has ruled under Rule 17 have concerned Rule 17(c), which pertains to subpoenas duces tecum seeking the production of documentary evidence or of objects (§§ 5-10, infra). In cases involving subpoenas duces tecum issued, pursuant to Rule 17(c), in connection with a federal grand jury investigation (§§ 5-7, infra), the Supreme Court has held that, because a grand jury subpoena issued through normal channels under Rule 17(c) is presumed to be reasonable, the burden of proving unreasonableness is on the party who is seeking to avoid compliance on the basis of unreasonableness (§ 5, infra). The Supreme Court has noted that, where it is alleged that compliance with a subpoena issued under Rule 17(c) in connection with a grand jury investigation would be unreasonable, the government may be required to reveal the general subject of the investigation, in order to allow the party who is challenging the subpoena a valid opportunity to prove unreasonableness (§ 6, infra). As to basing on relevancy grounds a motion to quash—in accordance with the Rule 17(c) provisions concerning unreasonableness or oppressiveness—a subpoena duces tecum issued in connection with a federal grand jury investigation, the Supreme Court has held that such a motion must be denied unless the Federal District Court to which the motion is made determines that there is no reasonable possibility that the category of materials which the government has subpoenaed will produce information relevant to the general subject of the grand jury investigation (§ 7, infra).

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[2] 8 Federal Procedure, L Ed, Criminal Procedure § 22:7.

With respect to subpoenas issued pursuant to Rule 17(c) prior to trial (§§ 8-10, infra), the Supreme Court has generally indicated that (1) Rule 17(c) is intended, not as an additional means of discovery, but as a means of expediting trials (§ 8[a], infra); (2) enforcement of a pretrial subpoena is committed to the sound discretion of the trial court(§ 8[b], infra); and (3) where Rule 17(c) provides that such a subpoena may be quashed by a court if compliance would be unreasonable or oppressive, such a subpoena may not be quashed under the rule for any other reason (§ 8(c), infra). The Supreme Court has held that any documents or other materials that are subpoenaed, constitute admissible evidence, and are in possession of the Federal Government must be produced by the government in response to a subpoena issued to the government under Rule 17(c) on behalf of a federal criminal defendant (§ 9, infra). As to a pretrial subpoena issued on behalf of the Federal Government under Rule 17(c), the Supreme Court has held or recognized that the government must clear three hurdles—relevancy, admissibility, and specificity—for the subpoena to be enforced (§ 10, infra).

With respect to other applications of Rule 17 of the Federal Rules of Criminal Procedure (§§ 11 and 12, infra), it has been noted by the Supreme Court that Rule 17(b), which requires the government to subpoena witnesses who are shown to be necessary to an indigent federal criminal defendant's adequate defense, does not require that all witnesses whose appearance is sought by a defendant for the defendant's defense be subpoenaed to appear on behalf of the defendant (§ 11, infra). Also, Rule 17(g) provides that any person on whom a subpoena is served pursuant to Rule 17 may be held in contempt of court for failure, without adequate excuse, to comply with the subpoena. The Supreme Court has recognized that Federal District Courts have the power to hold in contempt any nonparty witnesses who fail to comply with a Rule 17 subpoena (§ 12[a], infra), and that, where a person who has failed to comply with a subpoena issued in accordance with Rule 17 claims to have made a good faith attempt to comply, the proper appraiser of whether a good faith attempt to comply was actually made is the court that hears the claim of good faith (§ 12[b], infra). A corporate vice president has been held by the Supreme Court to have been in criminal contempt under Rule 17(g) for failing without adequate excuse to comply with a subpoena issued under Rule 17(c) to compel production of certain corporate records, where the subpoenaed records were in existence and were within the vice president's control (§ 12[c], infra). The Supreme Court, however, has held that a Federal Government attorney could not be held in contempt for failure to comply with a subpoena that was issued to the government under Rule 17(c), where the Supreme Court held that although the balance of the subpoena was valid, a particular clause in the subpoena was invalid (§ 12[d], infra).

[b] Practice pointers

Counsel representing a party who is seeking to avoid compliance with a subpoena that is issued pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure—which governs the issuance of subpoenas compelling the production of documentary evidence and provides that a court may quash or modify such a subpoena if compliance would be unreasonable or oppressive—is advised, in addition to seeking to demonstrate that the subpoena should be quashed or modified under Rule 17(c) as being unreasonable or oppressive, to consider contending that the enforcement of the subpoena would infringe on the party's right, under the Federal Constitution's First Amendment, to freedom of expression.[3]

II. General Matters

§ 3. Issuance of subpoena to nonparty; duty to assist in law enforcement

The United States Supreme Court has indicated that Rule 17 of the Federal Rules of Criminal Procedure is based at least in part on the concept that citizens have a duty to assist in law enforcement, and that Rule 17 contemplates a power to issue subpoenas to nonparty witnesses.

The Supreme Court in United States v New York Tel. Co. (1977) 434 US 159, 54 L Ed 2d 376, 98 S Ct 364, which generally involved provisions other than Rule 17, recognized that the concept that citizens have a duty to assist in enforcement of the laws is at least in part the predicate of Rule 17, which clearly contemplates power in the Federal District Courts to issue subpoenas and subpoenas duces tecum to nonparty witnesses.

§ 4. Grand jury's reliance on court for compulsion

It has been noted by the United States Supreme Court that a grand jury must rely on a court for compulsion under Rule 17 of the Federal Rules of Criminal Procedure.

In United States v Calandra (1974) 414 US 338, 38 L Ed 2d 561, 94 S Ct 613, 66 Ohio Ops 2d 320, which generally involved provisions other than Rule 17, the Supreme Court, observing that a grand jury's subpoena power is not unlimited, indicated that a grand jury must rely on a court to compel production of books, papers, or documents, and the testimony of witnesses under Rule 17.

III. Rule 17[c]; Production of Documentary Evidence and of Objects

A. In Grand Jury Context

§ 5. Presumption of reasonableness

With respect to the provision of Rule 17(c) of the Federal Rules of Criminal Procedure that a court may quash or modify a subpoena, which has been issued pursuant to Rule 17(c), if compliance with the subpoena would be unreasonable or oppressive, the United States Supreme Court has held that a grand jury subpoena issued through normal channels under Rule 17(c) is presumed to be reasonable.

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[3] See, for example, United States v R. Enterprises, Inc. (1991) 498 US 292, 112 L Ed 2d 795, 111 S Ct 722, in which, because the Federal Court of Appeals to whom the Supreme Court was remanding the case had not passed on a claim that enforcement of certain subpoenas duces tecum that were in question in the case and had been issued under Rule 17(c) would likely infringe on the First Amendment rights of corporations whose books and records had been subpoenaed, the Supreme Court left the claim to be resolved by the Court of Appeals on remand.

Commenting that because what is reasonable depends on the context, the limit imposed on a federal grand jury by the provision of Rule 17(c) concerning quashing or modifying a subpoena—that a court may quash or modify a subpoena duces tecum that has been issued by the court pursuant to Rule 17(c) if compliance would be unreasonable or oppressive —is not self-explanatory, the Supreme Court in United States v R. Enterprises, Inc. (1991) 498 US 292, 112 Ed 2d 795, 111 S Ct 722, said that a grand jury subpoena issued through normal channels under Rule 17(c) is presumed to be reasonable, and, therefore, that the burden of showing unreasonableness must be on the recipient who seeks, on the basis of unreasonableness, to avoid compliance with the subpoena. The presumption is indicated, the court said, by the language of Rule 17(c) permitting a subpoena to be quashed only "on motion" and "if compliance would be unreasonable."

§ 6. Disclosure of general subject of investigation

The United States Supreme Court has stated that, where it is alleged that compliance with a subpoena issued pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure in connection with a grand jury investigation would be unreasonable, a court may be justified in requiring the government to reveal the general subject of the investigation before requiring the challenging party to prove unreasonableness.

In United States v R. Enterprises, Inc. (1991) 498 US 292, 112 L Ed 2d 795, 111 S Ct 722, the Supreme Court, in reviewing a judgment under which certain subpoenas duces tecum issued pursuant to Rule 17(c) in connection with a federal grand jury investigation had been quashed, stated that a court may be justified, where it is alleged that compliance with a subpoena issued pursuant to Rule 17(c) in connection with a grand jury investigation would be unreasonable, in requiring the government to reveal the general subject of the investigation before requiring the party challenging the subpoena to prove unreasonableness. It seemed unlikely, the Supreme Court said, that a challenging party who did not know the general subject matter of a grand jury investigation would be able, no matter how valid the party's claim, to make the necessary showing that compliance with the subpoena would be unreasonable. The Supreme Court continued, however, that in such cases, it was "confident" that Federal District Courts would be able to craft appropriate procedures that balanced the interests of the subpoena recipient against the strong governmental interests in maintaining secrecy, preserving investigatory flexibility, and avoiding unnecessary delays. For example, the Supreme Court observed, a District Court, in order to insure that subpoenas duces tecum issued pursuant to Rule 17(c) are not routinely challenged as a form of discovery, may require that the government reveal the subject of the grand jury investigation to the District Court in chambers, so that the District Court can determine whether the motion has a reasonable prospect for success before the District Court discloses the subject matter of the investigation to the challenging party. With respect to the case at hand, the Supreme Court noted that it did not have to determine whether requiring the government to reveal the general subject of the investigation was justified, because there was no doubt that the parties whose business records were sought by the subpoenas in question were aware of the subject of the investigation.

§ 7. Determination as to unreasonableness or oppressiveness

The United States Supreme Court has (1) established some standards for determining whether a subpoena duces tecum that has been issued in connection with a federal grand jury investigation should be quashed under Rule 17(c) of the Federal Rules of Criminal Procedure as unreasonable or oppressive, and (2) under particular circumstances, upheld the denial of a motion under Rule 17(c) to quash subpoenas.

With respect to the provision of Rule 17(c) that a court may quash a subpoena that has been issued pursuant to Rule 17(c) for the production of documentary evidence or of objects if compliance would be unreasonable or oppressive, the Supreme Court, in United States v R. Enterprises, Inc. (1991) 498 US 292, 112 L Ed 2d 795, 111 S Ct 722, held that a motion to quash a subpoena duces tecum that has been issued in connection with a federal grand jury investigation and is being challenged on the asserted ground that the materials being subpoenaed are irrelevant to the investigation, must be denied unless the Federal District Court to which the motion is made determines that there is no reasonable possibility that the category of materials which the government has subpoenaed will produce information relevant to the general subject of the grand jury investigation. The Supreme Court said that the pretrial subpoena standards set out in United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090, infra § 10, requiring that the government establish the relevancy, admissibility, and specificity of the materials being subpoenaed, are inapplicable to a subpoena issued in connection with a grand jury investigation, because (1) the United States v Nixon standard would invite procedural delays to allow courts to evaluate the relevancy and admissibility of subpoenaed materials; (2) grand jury proceedings should be free of such delays, which would impede investigations and frustrate the public interest in the fair and expeditious administration of criminal laws; (3) requiring a detailed explanation of the government's reasons for seeking the subpoenaed materials might compromise the indispensable secrecy of grand jury proceedings; (4) broad disclosure would afford the targets of investigation far more information about a grand jury's internal workings than the Federal Rules of Criminal Procedure appear to contemplate; and (5) because in the grand jury context the decision as to what offense will be charged is routinely not made until after the grand jury has concluded its investigation, one cannot know in advance whether information sought during the investigation will be relevant and admissible in a prosecution for a particular offense. In reversing the portion of a judgment quashing subpoenas that had been issued under Rule 17(c) to two corporations in connection with a federal grand jury investigation of alleged interstate transportation of obscene materials, and in remanding the case, the Supreme Court noted, because the two corporations had not challenged the subpoenas as being too indefinite and had not claimed that compliance with the subpoenas would be overly burdensome, the court would not consider those aspects of the subpoenas. While the Supreme Court recognized that the corporations had asserted that the subpoenaed corporate business records were irrelevant to the grand jury investigation, the court said that, despite the fact that neither corporation had been shown to have shipped materials into, or otherwise to have conducted business in, the federal judicial district in which the grand jury was located, the Federal District Court for the district, in denying motions to quash the subpoenas, could have concluded —from the facts that the two corporations, as well as another corporation which had shipped sexually explicit materials into the district, were wholly owned by the same person, and that all three corporations did business in the same area—that there was a reasonable possibility that the subpoenaed records would produce information relevant to the grand jury investigation.

B. In Pretrial Context

§ 8. General considerations

[a] Intent to expedite trials

In the context of pretrial subpoenas, the United States Supreme Court has indicated that Rule 17(c) of the Federal Rules of Criminal Procedure—which (1) governs the issuance of subpoenas duces tecum seeking the production of documentary evidence or of objects in federal criminal proceedings, and (2) provides that a court may quash or modify a subpoena with which compliance would be unreasonable or oppressive—is intended not to provide an additional means of discovery, but to expedite trials.

Observing that Rule 17(c), concerning subpoenas duces tecum, does not provide a means of discovery in addition to the means provided by Rule 16 of the Federal Rules of Criminal Procedure, which rule specifically governs procedures concerning discovery of information that might be introduced at trial, the Supreme Court in Bowman Dairy Co. v United States (1951) 341 US 214, 95 L Ed 879, 71 S Ct 675, which involved a subpoena issued prior to a federal criminal trial, stated that the chief innovation of Rule 17(c) is to expedite trials by providing a time and place before trial for the inspection of the subpoenaed materials. The court said that the plain words of Rule 17(c) must be given their ordinary meaning to carry out the rule's purpose of establishing a more liberal policy for the production, inspection, and use of materials at trial.

To similar effect is United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090.

[b] Trial court's discretion as to enforcement

It has been held by the United States Supreme Court that enforcement of a pretrial subpoena duces tecum issued pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure generally must be committed to the sound discretion of the trial court.

In United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090, it was held that enforcement of a pretrial subpoena duces tecum issued pursuant to Rule 17(c) necessarily must be committed to the sound discretion of the trial court, because the necessity for the subpoena most often turns upon a determination of factual issues. The Supreme Court noted that, without a determination of arbitrariness or a determination that the trial court finding was without record support, an appellate court ordinarily will not disturb a trial court's finding that an applicant for a subpoena duces tecum has complied with the requirements of Rule 17(c). However, the Supreme Court added that in a case such as the case in question, where a subpoena duces tecum was directed to a President of the United States, appellate review of a Federal District Court's finding that the applicant for the subpoena has complied with Rule 17(c) ought to be particularly meticulous, in deference to a coordinate branch of government, to insure that the standards of Rule 17(c) have been applied correctly. The Supreme Court determined that the standards had been applied correctly in the case at hand.

[c] Unreasonableness or oppressiveness as only bases for quashing

In the context of a pretrial subpoena issued pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, the United States Supreme Court has indicated that unreasonableness or oppressiveness are the only bases under the rule for quashing the subpoena.

In United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090, which involved a subpoena issued prior to a federal criminal trial, the Supreme Court, referring to the language in Rule 17(c) providing that a subpoena issued under the Rule 17(c) for the production of documentary evidence or of objects may be quashed by a court, on a motion made promptly, if compliance with the subpoena would be "unreasonable or oppressive," stated that a subpoena issued under the rule may not otherwise be quashed.

§ 9. Materials sought by defendant

It has been held by the United States Supreme Court that any documents or other materials that are admissible in evidence at trial must be produced by the government in response to a subpoena duces tecum that is issued to the government for the production of documentary evidence or of objects, under Rule 17(c) of the Federal Rules of Criminal Procedure, on behalf of a federal criminal defendant.

In Bowman Dairy Co. v United States (1951) 341 US 214, 95 L Ed 879, 71 S Ct 675, wherein the Federal Government offered to produce all documents of evidentiary character in its custody that had been obtained other than by seizure or process, but did not offer to produce documents that had been furnished to the government by voluntary and confidential informants, the Supreme Court held that any documents or other materials that were admissible in evidence at trial had to be produced by the government in response to a subpoena duces tecum that was issued to the government—directing the government to produce for inspection certain books, papers, documents, and objects in the government's possession, in accordance with Rule 17(c)—on behalf of an accused who had been indicted for violating federal antitrust law. The court vacated a judgment that had reversed a judgment holding a government attorney in contempt for failure to comply with the subpoena. Evidentiary materials obtained by the government by solicitation or voluntarily from third persons, as well as evidentiary materials that had been used before a grand jury, were subject to the subpoena duces tecum issued pursuant to Rule 17(c) in connection with a criminal trial, the court said. The Supreme Court, however, cautioned that, where a court concludes that such materials obtained from third persons should be produced, the court ought to be solicitous to protect against disclosures of the identity of informants, and the method, manner, and circumstances of the government's acquisition of materials. The Supreme Court, however, with respect to the particular subpoena in question, held that a clause in the subpoena requiring the government to produce all relevant materials regardless of whether they might constitute evidence with respect to the guilt or innocence of the accused was invalid as a catchall provision that was not intended to produce evidentiary materials but was merely a "fishing expedition" to see what materials the provision might yield. Commenting that evidentiary materials which a federal criminal defendant may subpoena from the government pursuant to Rule 17(c) include, but are not limited to, evidentiary materials as to which the defendant has a right of discovery and inspection under Rule 16 of the Federal Rules of Criminal Procedure, the court said that in order for production to be required, the subpoena must constitute a good faith effort to obtain evidence, but that all subpoenaed discoverable materials need not actually be used in evidence. It would be strange indeed if a defendant discovered some evidence by use of Rule 16 which the government was not going to introduce and yet could not require production of the evidence by Rule 17(c), the court concluded.

§ 10. Materials sought by prosecution

In the following cases, the United States Supreme Court held or recognized that, with respect to a subpoena duces tecum issued on behalf of the Federal Government under Rule 17(c) of the Federal Rules of Criminal Procedure for the production of documentary evidence or of objects prior to a trial, the government must clear three hurdles—relevancy, admissibility, and specificity—for the subpoena to be enforced.

In order to require production of the materials sought prior to trial under a subpoena duces tecum that had been issued—on the motion of a special federal prosecutor, to the President of the United States for the production of certain tape recordings and documents, under Rule 17(c)—with respect to the federal indictment of certain presidential aides and advisors, the special prosecutor had to demonstrate that the materials were relevant, admissible, and specific, the Supreme Court held in United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090. Affirming the Federal District Court order under which the subpoena was issued, the Supreme Court concluded that the District Court's denial of the President's motion to quash the subpoena was consistent with Rule 17(c), because the special prosecutor had made a sufficient showing to justify a subpoena for production of materials before trial, where (1) there was a sufficient likelihood that each of the subpoenaed tapes contained conversations relevant to the offenses charged in the indictment; (2) with respect to many of the tapes, the special prosecutor had offered the sworn testimony or statements of one or more of the participants in the conversations as to what was said at the time; (3) in regard to the remaining tapes, the identity of the participants and the time and place of the conversations, taken in their total context, permitted a rational inference that at least part of the conversations related to the offenses charged in the indictment; (4) there was a sufficient preliminary showing that each of the subpoenaed tapes contained evidence that was admissible with respect to the offenses charged under the indictment; and (5) the subpoenaed materials were not available from any other source, and their examination and processing should not await trial in the circumstances shown.

In United States v R. Enterprises, Inc. (1991) 498 US 292, 112 L Ed 2d 795, 111 S Ct 722, the Supreme Court recognized that under the standards set out in United States v Nixon, supra, with respect to a subpoena duces tecum issued under Rule 17(c) for the production of documentary evidence or of objects in connection with a trial, the government must clear three hurdles—relevancy, admissibility, and specificity—for the subpoena to be enforced.

IV. Other Applications of Rule 17

§ 11. Subpoena of witnesses on behalf of indigent defendant

The United States Supreme Court has indicated that Rule 17(b) of the Federal Rules of Criminal Procedure, concerning the subpoena of witnesses on behalf of an indigent federal criminal defendant, does not require that all witnesses whose appearance is sought by such a defendant for his or her defense be subpoenaed to appear on behalf of the defendant.

In United States v Valenzuela-Bernal (1982) 458 US 858, 73 L Ed 2d 1193, 102 S Ct 3440, 11 Fed Rules Evid Serv 1, wherein the Supreme Court reversed a judgment reversing the conviction of an accused for transporting an illegal alien in violation of a federal statute, the court, with respect to the fact that two illegal aliens who were potential witnesses favorable to the accused were unavailable at the accused's trial because they had been deported, indicated that Rule 17(b) of the Federal Rules of Criminal Procedure—requiring the government to subpoena witnesses on behalf of indigent defendants, but only "upon a satisfactory showing . . . that the presence of the witness is necessary to an adequate defense," does not require that all witnesses whose appearance is sought by an indigent federal criminal defendant for the defendant's defense be subpoenaed to appear on behalf of the defendant.

§ 12. Failure to obey subpoena as constituting contempt

[a] Contempt by nonparty

Rule 17(g) of the Federal Rules of Criminal Procedure provides that any person on whom a subpoena is served pursuant to Rule 17 may be held in contempt of court for failure to comply with the subpoena. The Supreme Court has recognized that Rule 17 contemplates a power to hold in contempt nonparty witnesses who fail to comply.

In United States v New York Tel. Co. (1977) 434 US 159, 54 L Ed 2d 376, 98 S Ct 364, which generally involved provisions other than Rule 17, the Supreme Court observed that Rule 17 clearly contemplates power in the Federal District Courts to hold in contempt any nonparty witnesses who fail to comply with subpoenas or subpoenas duces tecum issued pursuant to Rule 17.

[b] Claim of good faith attempt to obey as subject to appraisal by court that hears claim

It has been held by the United States Supreme Court with respect to Rule 17(g) of the Federal Rules of Criminal Procedure, which provides that a person may be held in contempt of court for failure—without adequate excuse—to comply with a subpoena issued pursuant to Rule 17, that, where a person who has failed to comply with such a subpoena claims to have made a good faith attempt to comply, the court that hears the claim of good faith is the proper appraiser of whether a good faith attempt was actually made.

In affirming the conviction of the nominal vice president of a corporation for criminal contempt in failing to obey a subpoena that had been issued, in accordance with Rule 17(c) of the Federal Rules of Criminal Procedure, to compel the production of certain corporate records, the Supreme Court in Nilva v United States (1957) 352 US 385, 1 L Ed 2d 415, 77 S Ct 431, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, stated that, under Rule 17(g) of the Federal Rules of Criminal Procedure—which provides that any person on whom a subpoena is served pursuant to Rule 17 may be held in contempt of court for failure, without adequate excuse, to comply with the subpoena—a person's protestations of a good faith attempt to comply with such a subpoena are subject to appraisal by the court that hears the protestations, which court is the judge of the person's credibility and of the weight to be given to the person's testimony concerning the asserted good faith.

[c] Particular findings of contempt; held valid

Under particular circumstances, the United States Supreme Court has held that an individual had properly been held in contempt under Rule 17(g) of the Federal Rules of Criminal Procedure for failure without adequate excuse to comply with a subpoena issued pursuant to Rule 17.

In Nilva v United States (1957) 352 US 385, 1 L Ed 2d 415, 77 S Ct 431, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, the Supreme Court, under Rule 17(g)—which provides that any person on whom a subpoena is served pursuant to Rule 17 may be held in contempt of court for failure, without adequate excuse, to comply with the subpoena—affirmed the criminal contempt conviction of the nominal vice president of a corporation for failing to obey a subpoena that had been issued, pursuant to Rule 17(c), to command production of certain corporate records, where the Supreme Court determined that the trial court had a sufficient basis for concluding that the vice president intentionally, and without "adequate excuse," had failed to comply with the subpoena. When the vice president had appeared before the trial court in response to the subpoena, he had not claimed either want of actual possession of the required records or lack of opportunity or authority to produce them. The Supreme Court said that the evidence reasonably supported the conclusion that the records were in existence and were within the vice president's control. On other grounds, however, the Supreme Court vacated the vice president's sentence and remanded the case for reconsideration of the sentence.

[d] —Held invalid

Under the particular circumstances presented, it has been determined by the United States Supreme Court that an individual could not be held in contempt for failure to comply with a subpoena issued in accordance with Rule 17(c) of the Federal Rules of Criminal Procedure.

In Bowman Dairy Co. v United States (1951) 341 US 214, 95 L Ed 879, 71 S Ct 675, it was held by the Supreme Court that, because one should not be held in contempt for failure to comply with a subpoena that is part good and part bad, a Federal Government attorney could not be held in contempt for failure to comply with a subpoena that was issued to the government, in accordance with Rule 17(c) of the Federal Rules of Criminal Procedure, to compel the production of certain documentary evidence, where the Supreme Court determined that a particular clause in the subpoena was invalid in that it was too broad in describing the type of evidence to be produced. The Supreme Court said that the burden is not upon the person who faces punishment for failure to comply with a subpoena issued pursuant to Rule 17 to cull the good in the subpoena from the bad, but rather that the burden is on the court issuing a subpoena under Rule 17 to see that the subpoena is good in its entirety. The Supreme Court, vacating a judgment that had reversed a judgment holding the attorney in contempt for failure to comply with the subpoena, remanded the case for further proceedings.

Consult POCKET PART in this volume for later case service

PARKER v DUGGER

112 L Ed 2d 812

ROBERT LACY PARKER, Petitioner

v

RICHARD L. DUGGER, Secretary, Florida Department of Corrections, et al.

Reported in this volume: p 812, supra.

Holding: Florida appeals court's affirmance of death sentence held invalid where court (1) incorrectly determined that trial court found no mitigating circumstances, and thus (2) failed to consider evidence of nonstatutory mitigating circumstances.

BRIEFS AND APPEARANCES OF COUNSEL

Robert J. Link, of Jacksonville, Florida, argued the cause and filed briefs for petitioner:

The standards used by the Florida Supreme Court to approve or disapprove a death sentence imposed by a trial judge despite a jury's recommendation of life are subject to Eighth Amendment review, and the affirmance of petitioner's death sentence was based upon an unconstitutional application of those standards.

The Court of Appeals erred in holding that petitioner's constitutional claim against an evidentially unsupportable felony murder conviction was not presented to and decided by the Florida Supreme Court on direct appeal and that even if the claim was properly preserved on appeal, it was procedurally barred by petitioner's failure to reraise it in state postconviction proceedings.

Where the jury was permitted to convict petitioner of first-degree murder on either a felony murder theory or a premeditated murder theory, the Court of Appeals erred in holding that the availability of the latter theory made it harmless error to instruct the jury to completely disregard petitioner's defense to felony murder.

The petitioner was denied due process when the prosecutor was permitted to cross-examine him about the fact that he had conferred with defense counsel during a recess in his testimony, although the conference had been authorized by the trial judge and although the prosecutor offered no good-faith basis for asserting that it involved any conduct legitimately relevant for impeachment.

Carolyn M. Snurkowski, Assistant Attorney General of Florida, of Tallahassee, Florida, argued the cause and, with **Robert A. Butterworth,** Attorney General, and **Mark C. Menser,** Assistant Attorney General, both also of Tallahassee, Florida, filed a brief for respondents:

The Florida Supreme Court's "Tedder Rule" for reviewing jury override of death sentences is a rule of state law not subject to federal reapplication.

The Court of Appeals did not err in holding that petitioner's "Stromberg" claim was procedurally barred.

The petitioner is not entitled to federal creation of a "duress" defense to first-degree murder for the state of Florida.

The petitioner's due process rights were not violated by the court's decision to allow cross examination on the topic of "coaching" by counsel during a recess.

BRIEFS OF COUNSEL

McDERMOTT INTERNATIONAL, INC., Petitioner
v
JON C. WILANDER

Reported in this volume: p 866, supra.

Holding: Employee's status as "seaman" under Jones Act (46 USCS Appx § 688) held not to require that employee aid in navigation of vessel.

Annotation: p 1254, infra.

BRIEFS AND APPEARANCES OF COUNSEL

James B. Doyle, of Lafayette, Louisiana, argued the cause and filed briefs for petitioner:

Analysis of Wilander's claim for seaman status requires consideration of his transportation function to be consistent with the history and development of Jones Act remedies.

Wilander, as a person with only marginal claim to status under the Jones Act, should be especially scrutinized with respect to the transportation functions he performed.

Jennifer Jones Bercier, of Cameron, Louisiana, argued the cause and, with **J. B. Jones, Jr.,** also of Cameron, Louisiana, filed a brief for respondent:

Both prior and subsequent to the passage of the Jones Act, 46 USC 688 (46 USCS Appx § 688), American courts have broadly interpreted the requirement that a seaman "aid in navigation" of the vessel to which he has attached.

This interpretation is in keeping with the broad purposes of the Act, which is designed to protect employees who are required to work in a hazardous maritime environment.

The test of seaman status set forth by the Fifth Circuit in Offshore Co. v Robison (1959, CA5) 266 F2d 769, is an accurate synthesis of the guidelines established by the United States Supreme Court and serves to further the purposes of the Jones Act.

Both Congress and the Supreme Court have expressed the intention to provide coverage under the Jones Act for employees, such as Wilander, who work aboard special purpose vessels engaged in offshore oil production.

The Seventh Circuit rule of seaman status set forth in Johnson v John F. Beasley (1984, CA7) 742 F2d 1054, not only is in direct and irreconcilable conflict with prior decisions of this court, but thwarts the policy behind the Jones Act.

The Supreme Court should adopt a uniform rule for seaman status which grants Jones Act remedies to all workers who contribute to the economic viability and mission of the vessel to which they are assigned.

David W. Robertson and Michael C. Maher filed a brief for Association of Trial Lawyers of America as amicus curiae urging affirmance.

Richard J. Arsenault filed a brief for Louisiana Trial Lawyers Association as amicus curiae.

ANNOTATION

SUPREME COURT'S VIEWS AS TO WHO IS "SEAMAN" UNDER JONES ACT (46 USCS APPX § 688, AND SIMILAR PREDECESSOR PROVISIONS)

by

John F. Wagner Jr., J.D.

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32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 45-47

Annotations: See the related matters listed in the annotation.

11 Federal Procedure, L Ed, Employers' Liability Acts §§ 30:87, 30:88, 30:118, 30:119

9 Federal Procedural Forms, L Ed, Employers' Liability Acts § 27:111

11 Am Jur Pl & Pr Forms (Rev), Federal Employers' Liability and Compensation Acts, Form 151

9 Am Jur Trials 665, Seaman's Injuries

46 USCS Appx § 688

L Ed Digest, Evidence § 905; Federal Employers' Liability and Workers' Compensation Acts §§ 58, 59; Statutes § 166.3

L Ed Index, Jones Act; Seamen

ALR Index, Jones Act; Seamen

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I. Preliminary Matters

§ 1. Introduction

[a] Scope

This annotation[1] collects and analyzes the decisions in which the United States Supreme Court has determined[2] who is a "seaman" within the meaning of the Jones Act,[3] which is presently located at 46 USCS Appx § 688[4] and which generally authorizes a "seaman" to recover damages which result from an employer's negligence.[5]

[b] Related matters

Shipowner's liability for injury or death of seaman resulting from failure to furnish him adequate assistance for work on or connected with vessel—federal cases. 18 L Ed 2d 1497.

Seaman as injured "in the course of his employment" for purposes of the Jones Act—federal cases. 4 L Ed 2d 1777.

Who, other than seamen, are entitled to benefits of seaworthiness doctrine. 3 L Ed 2d 1764.

Bystander recovery of damages for infliction of emotional distress under Jones Act (46 USCS Appx § 688). 99 ALR Fed 671.

Who is "owner" of vessel or "employer" of seaman for maritime purposes. 95 ALR Fed 636.

Applicability of Jones Act (46 USCS Appx § 688) to workers connected with operation of dredges, drilling platforms, derricks, or similar special-purpose equipment. 92 ALR Fed 733.

Applicability of Jones Act (46 USCS § 688) to foreign seamen, foreign ships, or other foreign circumstances. 68 ALR Fed 360.

Who is a "master or member of a crew of any vessel" within exclusion of Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 902(3) and 903(a)(1)). 20 ALR Fed 600.

When is vessel in navigation for

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[1] The present annotation supersedes the annotations at 96 L Ed 211 and 97 L Ed 1274.

[2] Supreme Court decisions which assume, without deciding, that a person is a "seaman" for purposes of the Jones Act are not within the scope of this annotation.

[3] This annotation, however, does not cover (1) the applicability of the Jones Act in circumstances involving foreign ships, foreign employees, or other foreign contacts, as to which the annotation at 68 ALR Fed 360 should be consulted; and (2) whether an employee sustained personal injury while engaged "in the course of employment" as a seaman for purposes of the Jones Act, as to which the annotation at 4 L Ed 2d 1777 should be consulted.

[4] The Jones Act was passed as part of the Merchant Marine Act of 1920 (ch 250, § 33, 41 Stat 1007), and was originally codified at 46 USCS § 688. An amendment limiting the availability of the Jones Act remedy for certain aliens (former 46 USCS § 688(b)), and designating the existing provision in § 688 as § 688(a), was added in 1982; in 1983, § 688 was redesignated as 46 USCS Appx § 688. This annotation includes all those Supreme Court decisions which determine who is a "seaman" under the Jones Act, whatever its statutory codification.

[5] For the pertinent text of the Jones Act, see § 1[c], infra.

purposes of Jones Act (46 USC § 688). 5 ALR Fed 674.

Recovery, under Jones Act or seaworthiness doctrine, by seaman or maritime worker injured in boarding or leaving ship. 8 ALR3d 505.

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Engerrand and Bale, Seaman Status Reconsidered. 24 South Texas LJ 431 (1983).

Engerrand, Seaman Status Reconstructed. 32 South Texas L Rev 169 (May 1991).

Robertson, A New Approach to Determining Seaman Status. 64 Texas L Rev 79 (August 1985).

◆

Norris, The Law of Maritime Personal Injuries (4th ed).

Norris, The Law of Seamen (4th ed).

[c] Pertinent statutory text

The Jones Act, 46 USCS Appx § 688, provides in pertinent part as follows:

§ 688. Recovery for injury to or death of seaman

(a) Application of railway employee statutes; jurisdiction. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable . . . .

§ 2. Background, summary, and comment

[a] Generally

The 1920 Jones Act represented the second attempt by Congress to supersede a landmark decision which had been handed down by the United States Supreme Court in 1903,[6] to the extent that such decision held, as a matter of admiralty law, that a "seaman" was not allowed to recover for the negligence of the ship's master or any member of the crew. The earlier legislation, enacted in 1915 as part of a shipping bill,[7] was held to be "irrelevant" by the Supreme Court insofar as such legislation allowed for the recovery of damages where "seamen" were injured by fellow servants, but did not expressly provide seamen with any negligence remedy.[8] Subsequently, however, Congress passed the Jones Act, which expressly authorizes negligence actions by any "seaman" injured in the course of employment, as well as by the personal representative of such a "seaman" where death results from an employment-related injury.[9]

The term "seaman" is not defined in the Jones Act. Although it has been suggested that the courts had not provided any clear definition of the term at the time of the Jones

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[6] The Osceola (1903) 189 US 158, 47 L Ed 760, 23 S Ct 483.

[7] Ch 153, § 20, 38 Stat 1185.

[8] Chelentis v Luckenbach S. S. Co. (1918) 247 US 372, 62 L Ed 1171, 38 S Ct 501; see Engerrand and Bale, Seaman Status Reconsidered, 24 South Texas LJ 431 (1983).

[9] For the pertinent text of the Jones Act, see § 1[c], supra.

Act's passage,[10] the Supreme Court has stated that it is to be assumed that the Jones Act adopted the meaning of "seaman" which existed at that time under the general maritime law (§ 3, infra).

After an early postenactment decision of the Supreme Court held that a stevedore was a "seaman" within the meaning of the Jones Act,[11] Congress passed the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) in 1927,[12] which as originally enacted provided the exclusive compensatory remedy to all employees[13] injured on navigable waters, including any drydock, except the "master or member of a crew of any vessel" or certain workers having duties with respect to small vessels.[14]

Although, for some years following the passage of the LHWCA, the Supreme Court took the position that certain employees who were not members of a vessel's crew could be covered under both the LHWCA and the Jones Act, the court eventually adopted the view that the Jones Act term "seaman" was equivalent to the term "master or member of a crew" as used in the subsequently enacted LHWCA, with the result that an employee qualified as a Jones Act "seaman" only if the employee was excluded from the LHWCA because he or she was a "master or member of a crew" (§ 4[a], infra).

With respect to statutes other than the LHWCA, the court has ruled that an amendment to a Federal Employers' Liability Act (FELA) provision (45 USCS § 51), which amendment defined an "employee" of a carrier subject to the FELA as any employee whose duties furthered and substantially affected interstate or foreign commerce, did not extend the meaning of "seaman" under the Jones Act to include anyone who was not a seaman before the amendment was enacted (§ 4[b], infra). In another case, the court held that former 46 USCS § 713 (predecessor of 46 USCS § 10101)—a shipping statute in effect at the time of the Jones Act's passage which defined the term "seaman," for purposes of the chapter of Title 46 in which the Jones Act formerly was located, as all nonapprentices who were employed or engaged to serve in any capacity on board a United States vessel—did not act to restrict the meaning of "seaman" for Jones Act purposes (§ 4[c], infra).

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[10] See Robertson, A New Approach to Determining Seaman Status, 64 Texas L Rev 79 (August 1985).

[11] International Stevedoring Co. v Haverty (1926) 272 US 50, 71 L Ed 157, 47 S Ct 19.

[12] Ch 509, 44 Stat 1424, subsequently entitled the Longshore and Harbor Workers' Compensation Act and presently codified at 33 USCS §§ 901-950. References to the LHWCA in this annotation may be to the LHWCA or to either full version of the act's title.

[13] Outside of the employment relationship, persons covered by the LHWCA formerly were able to bring actions against nonemployer vessel owners based on the warranty of seaworthiness, under the rule announced by the Supreme Court in Seas Shipping Co. v Sieracki (1946) 328 US 85, 90 L Ed 1099, 66 S Ct 872, reh den 328 US 878, 90 L Ed 1646, 66 S Ct 1116, which rule was grounded on the reasoning that when an employee covered by the LHWCA is injured while working on board a ship in navigable waters, the employee is "a seaman because he is doing a seaman's work and incurring a seaman's hazards." In 1972, however, Congress amended the LHWCA (33 USCS § 905(b)) to foreclose unseaworthiness claims by covered persons, which means that actions by such persons against vessel owners now must be predicated on negligence; see Norris, The Law of Maritime Personal Injuries (4th ed) § 4:8.

[14] 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 110, 112, 119. Subsequent amendments to 33 USCS § 902(3), which defines the term "employee" for purposes of the LHWCA, expand the scope of navigable waters to include any adjoining areas customarily used in maritime employment, but specifically except certain individuals from entitlement to compensation under the LHWCA if they are subject to coverage under a state workers' compensation law.

Three requirements for an employee to qualify as a "seaman" under the Jones Act have been identified in the relatively few Supreme Court cases which have enunciated general standards (§§ 5-7, infra). First, the court has recognized that the employee must be connected to a "vessel in navigation" (§ 5[a], infra). It has been held, under particular circumstances, that an employee was not precluded from being a "seaman" for Jones Act purposes where the vessel to which the employee was connected was anchored (§ 5[b], infra). Second, an employee must be somehow attached to a vessel, with the requisite attachment being variously described as "being a member of the vessel" or "of the ship's company," or "owing allegiance to a vessel" (§ 6, infra). Third, the employment duties of a Jones Act "seaman" must be related to the work of a vessel, but it is no longer required—as it appeared to be in earlier Supreme Court decisions—that the employee's duties aid the navigation of the vessel (§ 7, infra).

Although the Jones Act and the LHWCA have been held to be mutually exclusive remedial provisions by the Supreme Court (§ 4[a], infra), it nevertheless recently has been held by the court that where a maritime worker's occupation is one of those enumerated in a provision of the LHWCA (33 USCS § 902(3)) which defines the term "employee" for LHWCA purposes, the worker is not precluded from bringing suit as a "seaman" under the Jones Act (§ 8, infra). Such holding casts some doubt on earlier Supreme Court cases which held or recognized that particular longshore workers and stevedores were not "seamen" under the Jones Act (§ 12, infra). Nearly every other employee whose particular duties the Supreme Court has examined has been found to be, or to be able to qualify as, a "seaman" for Jones Act purposes. Thus, the court has apparently held or recognized all of the following to be, or to be able to qualify as, Jones Act "seamen" under the particular circumstances presented in the cases: (1) barge workers (§ 9, infra); (2) a dredge deckhand (§ 10, infra); (3) a general laborer (§ 11, infra); (4) a master of a vessel (§ 13, infra); and (5) a piledriver (§ 14, infra). However, an employee who was working as a repairman for a seasonal fleet of motorboats when he was killed was held not to be a Jones Act "seaman" (§ 15, infra).

[b] Practice pointers

Counsel for each side on the question whether a particular employee is a "seaman" under the Jones Act should be prepared (1) to convince the court as to the application of the appropriate legal standard in resolving the question; and (2) to prove to the trier of fact that the employee does, or does not, satisfy such standard.[15]

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[15] See, for example, McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, in which the Supreme Court noted that the question of who was a "member of a crew" within the meaning of the Longshore and Harbor Workers' Compensation Act (33 USCS §§ 901-950)—and therefore who was a

II. General Considerations

§ 3. View that Jones Act adopted definition of "seaman" consonant with general maritime law

The Supreme Court has recognized that the definition of the term "seaman" which was adopted implicitly by the Jones Act was consonant with definition of such term under the general maritime law.

In McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, the court stated that insofar as neither the Jones Act nor The Osceola (1903) 189 US 158, 47 L Ed 760, 23 S Ct 483—the Supreme Court decision which the Jones Act sought to overrule by establishing a negligence action for seamen—defined the term "seaman," the court assumed that the Jones Act used the term in the same way that admiralty courts had used it under the general maritime law. Since the only purpose of the Jones Act was to remove the bar created by The Osceola, so that seamen would have the same rights to recover for negligence as other tort victims, said the court, the Jones Act adopted without further elaboration the term as it was used in The Osceola. Moreover, the court stated, "seaman" was a maritime term of art, and the court assumed that the established meaning of the term was intended by Congress in the absence of a contrary indication.

§ 4. Effect of other federal statutes on Jones Act definition

[a] Longshore and Harbor Workers' Compensation Act

In the following cases, the Supreme Court held or recognized that the Jones Act term "seaman" was equivalent to the term "master or member of a crew" as used in the subsequently enacted Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950).

Although earlier Supreme Court decisions supported the view that longshore workers and stevedores—who were covered under the LHWCA at the time of their injuries—nevertheless could bring actions against their employers as "seamen" within the meaning of the Jones Act if such employees were injured while engaged on work aboard a vessel in navigable waters,[16] the court ruled in Swanson v Marra Bros., Inc. (1946) 328 US 1, 90 L Ed 1045, 66 S Ct 869, affirming a Federal Court of Appeals judgment against an employee, that the effect of the provision of the LHWCA (33 USCS § 903) which extended a remedy against employers to employees who were not a "master or member of a crew of any vessel" was to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters. The court said that the LHWCA left unaffected the rights of members of the crew of a vessel to recover under

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Jones Act "seaman"—was better characterized as a mixed question of law and fact, because (1) the interpretation of the statutory terms "member of a crew" and "seaman" was a question of law, and (2) although it was for the jury to find the facts and apply the proper legal standard, the trial court must not abdicate its duty to determine if there was a reasonable basis to support the jury's conclusion.

[16] Nogueira v New York, N. H. & H. R. Co. (1930) 281 US 128, 74 L Ed 754, 50 S Ct 303; South Chicago Coal & Dock Co. v Bassett (1940) 309 US 251, 84 L Ed 732, 60 S Ct 544; and O'Donnell v Great Lakes Dredge & Dock Co. (1943) 318 US 36, 87 L Ed 596, 63 S Ct 488.

the Jones Act when they were injured while pursuing their maritime employment, whether on board or on shore.

Citing Swanson v Marra Bros., Inc., supra, the court in Senko v La Crosse Dredging Corp. (1957) 352 US 370, 1 L Ed 2d 404, 77 S Ct 415, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, stated that in order for an employee to recover as a "seaman" under the Jones Act, the employee had to be a "member of a crew" as that term was used in the LHWCA.

Noting that "member of a crew" and "seaman" were closely related terms, and that the two terms were often used interchangeably in general maritime cases decided prior to the Jones Act, the Supreme Court stated in McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, that the language in the LHWCA which excepted a "master or member of a crew" of any vessel from coverage under the LHWCA restated who a "seaman" under the Jones Act was supposed to be—namely, a sea-based maritime employee. The court, observing that the mutual exclusivity of the Jones Act and the LHWCA had been recognized in Swanson v Marra Bros., Inc., supra, said that the term "master or member of a crew" was a refinement of the Jones Act term "seaman," and the LHWCA term restricted the Jones Act term only to the extent that "seaman" had been taken to include land-based employees within its scope. It was thus odd but true, emphasized the court, that the key requirement for Jones Act coverage—the definition of who was a "seaman"—appeared in another statute.

The Supreme Court observed in Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486, that the phrase "member of a crew of any vessel" as used in the LHWCA was a refinement of the term "seaman" as used in the Jones Act, and that the Jones Act and the LHWCA were mutually exclusive for the very reason that the LHWCA specifically precluded from its provisions any employee who is a master or member of a crew of any vessel.

See Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46, in which the court stated that there could be little doubt that Congress excluded a "master or member of a crew of any vessel" from coverage under the LHWCA in the belief that under the statutes then in force, including the Jones Act, master and crew were already adequately protected in case of injury or death.

See also Norton v Warner Co. (1944) 321 US 565, 88 L Ed 931, 64 S Ct 747, infra § 9, where the court held a barge employee could not be restricted to the remedy afforded by the LHWCA and excluded from recovery afforded to a "seaman" under the Jones Act.

In addition, see Seas Shipping Co. v Sieracki (1946) 328 US 85, 90 L Ed 1099, 66 S Ct 872, reh den 328 US 878, 90 L Ed 1646, 66 S Ct 1116, in which the Supreme Court stated that the LHWCA, by not covering members of a crew of a vessel, thereby saved to such persons their pre-existing rights under the Jones Act.

[b] Federal Employers' Liability Act

In 1939, a provision of the Federal Employers' Liability Act (FELA) (45 USCS § 51) was amended so as to define an "employee" of a carrier subject to the FELA[17] as any employee whose duties furthered and substantially affected interstate or foreign commerce. The Supreme Court has held that such amendment did not extend the meaning of "seaman" under the Jones Act to include anyone who was not a seaman before the amendment was enacted.

The contention that the 1939 amendment to a FELA provision (45 USCS § 51)—so as to define an "employee" of a carrier subject to the FELA "any employee . . . any part of whose duties . . . shall be the furtherance of interstate or foreign commerce," or "shall, in any way directly or closely and substantially, affect such commerce"—extended the meaning of the term "seaman" in the Jones Act to include those whose work "substantially affects" navigation was rejected by the court in Desper v Starved Rock Ferry Co. (1952) 342 US 187, 96 L Ed 205, 72 S Ct 216, reh den 342 US 934, 96 L Ed 695, 72 S Ct 374. With respect to the Jones Act provision that statutes "modifying or extending the common-law right or remedy in cases of personal injuries to railway employees" applied in actions brought by seamen, the court noted that the amendment had no effect on the "right or remedy" of railway employees, but merely redefined for the purposes of the FELA the scope of the word "employee" to include certain persons not covered previously. Furthermore, said the court, the definition of "seaman" in the Jones Act was never made dependent on the meaning of "employee" as used in legislation applicable to railroads.

[c] Miscellaneous

In the following cases, the Supreme Court recognized that the meaning of "seaman" under the Jones Act was not restricted by a federal statute other than those discussed in §§ 4[a], 4[b], supra.

The court stated in Uravic v F. Jarka Co. (1931) 282 US 234, 75 L Ed 312, 51 S Ct 111, that since the language of former 46 USCS § 713 (predecessor of 46 USCS § 10101)—a shipping statute in effect at the time of the enactment of the Jones Act which then provided that the term "seaman," for purposes of the chapter of Title 46 in which the Jones Act formerly was located, was defined as "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board" vessels belonging to United States citizens—was directed to the extension, not to the restriction, of what persons were included within the definition of "seaman" for purposes of the relevant chapter, the definition of "seaman" in the Jones Act was not limited by former § 713.

Similarly, the Supreme Court in Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46—explicitly agreeing with the view expressed in Uravic v F. Jarka Co., supra, that former 46 USCS § 713 (predecessor of 46 USCS § 10101) did not restrict the scope of the term "seaman" as used in the Jones Act—stated that the rule of construction for the term "seaman" which was laid down in former § 713 had to be confined to those sections of the chapter with which it had been enacted in 1872, or in the equivalent provisions of the

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[17] The effect of the Jones Act, the text of which is set forth in § 1[c], supra, was to enlarge liability under maritime law by conferring on seamen or their representatives the right afforded to railroad employees covered under the FELA to recover damages resulting from an employer's negligence; see 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts § 41.

Revised Statutes of the United States, before such sections were rearranged by the compilers of the United States Code. For the purpose of the pertinent chapter, the court added, the definition of "seaman" in former § 713 put into the covered class some that might otherwise be excluded, but such definition did not take any one out who would otherwise be there.

III. Requirements for "Seaman" Status

§ 5. Employee's connection with "vessel in navigation"

[a] Generally

In the following cases, the Supreme Court recognized that in order to qualify as a "seaman" for purposes of the Jones Act, an employee must be connected to a "vessel in navigation."

The court stated in Swanson v Marra Bros., Inc. (1946) 328 US 1, 90 L Ed 1045, 66 S Ct 869, supra § 4[a], that the benefits of the Jones Act, which gave to any "seaman" a right to recover for injuries resulting from an employer's negligence, were confined to employees who had the status, under the Longshoremen's and Harbor Worker's Compensation Act (33 USCS § 903), of a "master or member of a crew of any vessel" plying in navigable waters.

In holding that an employee who, at the the time of his employment-related accidental death, was engaged in seasonal repair work of sightseeing motorboats laid up for the winter was not a "seaman" within the meaning of the Jones Act, the court in Desper v Starved Rock Ferry Co. (1952) 342 US 187, 96 L Ed 205, 72 S Ct 216, reh den 342 US 934, 96 L Ed 695, 72 S Ct 374, pointed out that there was no vessel in navigation at the time of the employee's death. Although the employee had been a boat operator during the previous season, and was to resume operator's duties when the boats were in the water for the next season, said the court, the fact that an employee has been or expects in the future to be a seaman does not render maritime work which was not maritime in its nature.

Recovery is precluded under the Jones Act if the ship involved in an employee's claim is not a vessel in navigation, the court stated in Roper v United States (1961) 368 US 20, 7 L Ed 2d 1, 82 S Ct 5.

In McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, infra § 7, the court observed that the key to seaman status under the Jones Act is employment-related connection to a vessel in navigation.

To the same effect as McDermott Int'l, Inc. v Wilander, supra, is Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486.

See Butler v Whiteman (1958) 356 US 271, 2 L Ed 2d 754, 78 S Ct 734, infra § 11, where the court held that a certiorari petitioner's evidence presented an evidentiary basis as to whether (1) a particular tug was in navigation; and (2) petitioner's decedent was a seaman and a member of the crew of the tug within the meaning of the Jones Act.

[b] Anchored vessels

It has been held by the Supreme Court under particular circumstances that an employee was not precluded from being a "seaman" within the meaning of the Jones Act where the vessel to which the employee was connected was anchored.

Stating that an employee's duties during a vessel's travel were relevant in determining whether the employee was a "member of a crew" who could recover for personal injuries, as a "seaman" under the Jones Act, which were sustained while the vessel was anchored, the court in Senko v La Crosse Dredging Corp. (1957) 352 US 370, 1 L Ed 2d 404, 77 S Ct 415, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, infra § 10, ruled that the fact that a dredge was connected to the shore at the time that a deckhand was injured was not controlling on the question of Jones Act liability. The court, observing that transoceanic liners might be confined to berth for lengthy periods, during which time the ship would be kept in repair by its crew, said that there could be no doubt that a member of such liner's crew would be covered by the Jones Act while berthed even though the ship was never in transit during the crew member's employment.

§ 6. Employee's attachment to vessel

The Supreme Court has recognized, in the following cases, that in order to have the status of Jones Act "seaman," an employee must be somehow attached to a vessel.

In Senko v La Crosse Dredging Corp. (1957) 352 US 370, 1 L Ed 2d 404, 77 S Ct 415, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, infra § 10, the court stated that there was sufficient evidence in the record for the jury to decide that a dredge deckhand was permanently attached to and employed by a dredge as a member of its crew, and therefore that the deckhand was entitled to bring an action under the Jones Act for his employment-related injuries.

The Supreme Court observed in Braen v Pfeifer Oil Transp. Co. (1959) 361 US 129, 4 L Ed 2d 191, 80 S Ct 247, infra § 9, that since it was seamen, not others who might work on a vessel, to whom Congress had extended the protection of the Jones Act, an injured party must have status as a member of the vessel in order to qualify as a Jones Act "seaman."

In Moragne v States Marine Lines, Inc. (1970) 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772, a case arising under the general maritime law, the Supreme Court stated that a true seaman was a member of a ship's company, covered by the Jones Act.

It was stated by the court in McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, that sea-based maritime workers, who owed their allegiance to a vessel and not solely to a land-based employer, were seamen within the meaning of the Jones Act. Observing that all who worked at sea in the service of a ship faced those particular perils to which the protection of the maritime law was directed, the court said that it was not the employee's particular job that was determinative, but the employee's connection to a vessel.

To similar effect as McDermott Int'l, Inc. v Wilander, supra, is Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486.

§ 7. Relationship of employee's duties to work of vessel

The employment duties of a Jones Act "seaman," the Supreme Court has recognized, must be related to the work of a vessel, but it is not required that such duties aid the navigation of the vessel.

In Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46, in which the Supreme Court held, as discussed in § 13, infra, that a master of a vessel was a "seaman" for purposes of the Jones Act, the court said that it was enough to be included within the definition of "seaman" that what a mariner did affected the operation and welfare of the ship when the ship was upon a voyage.

Although some earlier Supreme Court decisions supported the view that, in order to be a "seaman" within the meaning of the Jones Act, an employee was required to aid in the navigation of a vessel,[18] the Supreme Court unanimously held in McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, that insofar as the key to seaman status was employment-related connection to a vessel in navigation, it was not necessary that the employee aid in navigation or contribute to the transportation of the vessel, but rather it was required only that the employee perform the vessel's work. Noting that it had been held in Offshore Co. v Robison (1959, CA5 La) 266 F2d 769, 75 ALR2d 1296, that part of the test for seaman status under the Jones Act was that an employee's duties contribute to the function of the vessel or to the accomplishment of its mission, the court said that such statement captured well an important requirement of seaman status. The court also pointed out that an "aid in navigation" requirement had been rejected previously in Warner v Goltra, supra. Stating that in the case at hand, it was being asked only if an employee should be precluded from seaman status under the Jones Act because the employee did not perform transportation-related functions on board the vessel to which the employee was assigned, the Supreme Court accordingly affirmed a Federal Court of Appeals judgment which had held that a paint foreman, who was injured on the job while on assignment to an American-flag vessel which operated as a paint boat that served oil drilling platforms in the Persian Gulf, was a Jones Act "seaman."

To similar effect as McDermott Int'l, Inc. v Wilander, supra, is Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486.

IV. Particular Employees as Seamen

§ 8. Person with job specifically enumerated under Longshore and Harbor Workers' Compensation Act, generally

Under a provision of the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS § 902(3)), which provides the exclusive remedy for injured maritime workers within its scope, the term "employee" generally includes any person engaged in maritime employment, including certain enumerated occupations.[19] It has been held by the Supreme Court that, where a maritime worker's occupation was one of those enumerated by such provision, the worker nevertheless could be entitled to bring suit as a "seaman" under the Jones Act.

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[18] South Chicago Coal & Dock Co. v Bassett (1940) 309 US 251, 84 L Ed 732, 60 S Ct 544; Norton v Warner Co. (1944) 321 US 565, 88 L Ed 931, 64 S Ct 747; and Senko v La Crosse Dredging Corp. (1957) 352 US 370, 1 L Ed 2d 404, 77 S Ct 415, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716.

[19] The provision lists the following employees: (1) any longshoreman or other person engaged in longshoring operations; and (2) any harborworker including a ship repairman, shipbuilder, and shipbreaker.

In Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486, a case involving a ship repairman, the Supreme Court ruled that a maritime worker whose occupation was one of those which were enumerated in the LHWCA provision which defined the term "employee" for purposes of the LHWCA (33 USCS § 902(3)) nevertheless may be entitled to bring suit as a "seaman" within the meaning of the Jones Act. The court observed that some maritime workers could be Jones Act seamen performing a job specifically enumerated under the LHWCA, since there was no indication in the Jones Act, the LHWCA, or elsewhere that Congress had excluded from Jones Act remedies those traditional seamen who owed allegiance to a vessel at sea, but who did not aid in navigation. A maritime worker was limited to LHWCA remedies, said the court, only if no genuine issue of fact existed as to whether the worker was a seaman under the Jones Act. Affirming a Federal Court of Appeals judgment in the case at hand, which judgment had reversed a Federal District Court judgment holding that the ship repairman was not a Jones Act seaman as a matter of law, the Supreme Court noted that not all ship repairmen lacked the requisite connection, as a matter of law, to a vessel in navigation to qualify for status as seamen for Jones Act purposes.

§ 9. Barge worker

In the following cases, the Supreme Court apparently held or recognized that each of the barge workers involved was a Jones Act "seaman."

The court in Norton v Warner Co. (1944) 321 US 565, 88 L Ed 931, 64 S Ct 747, held that only by a distorted definition of the word "crew" as used in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950) could a boatman, who lived and generally worked aboard a barge which had no motive power of its own and which was confined in its operation to waters within a 30-mile radius of a city, be restricted to the remedy afforded by the LHWCA and excluded from recovery afforded to a "seaman" under the Jones Act. The court affirmed a judgment in favor of the boatman's employer, which had brought suit to set aside an award of compensation to the boatman under the LHWCA.

The Supreme Court stated in Braen v Pfeifer Oil Transp. Co. (1959) 361 US 129, 4 L Ed 2d 191, 80 S Ct 247, in which the court reversed a Federal Court of Appeals judgment on other grounds, that an employee who had the status of mate on a barge therefore was a "seaman" for purposes of the Jones Act.

§ 10. Dredge deckhand

An employee who worked as a deckhand aboard a dredge was held by the Supreme Court to be a "seaman" within the meaning of the Jones Act.

The court in Senko v La Crosse Dredging Corp. (1957) 352 US 370, 1 L Ed 2d 404, 77 S Ct 415, reh den 353 US 931, 1 L Ed 2d 724, 77 S Ct 716, held that the evidence was sufficient to support the jury's finding that a dredge deckhand—a handyman whose duties included the general maintenance of a dredge—was a member of a crew so as to be entitled to recover for his injuries as a "seaman" under the Jones Act. The deckhand had been injured while placing signal lanterns from the dredge in a shed on a neighboring riverbank. The dredge was anchored to the shore at the time of the deckhand's injury, and during all the time the deckhand worked for the employer dredging company. According to the employee's witnesses at trial, the deckhand was hired to clean and take care of the deck of the dredge, splice rope, stow supplies, and generally to keep the dredge in shape. This testimony, said the court, indicated that substantially all of the deckhand's duties were performed on or for the dredge. In addition, it was testified that a usual duty of a dredge deckhand to take soundings and clean navigation lights when the dredge was in transit. Here again, noted the court, the jury could reasonably have believed that the deckhand would have these responsibilities in the event that the dredge involved was moved. The court reversed a judgment against the deckhand, and remanded the case.

§ 11. General laborer

It has apparently been recognized by the Supreme Court court that a general laborer could qualify as a "seaman" for purposes of the Jones Act under particular circumstances.

In reversing a Federal Court of Appeals judgment against a certiorari petitioner, and in remanding the case for trial, the Supreme Court held in Butler v Whiteman (1958) 356 US 271, 2 L Ed 2d 754, 78 S Ct 734, that the petitioner's evidence presented an evidentiary basis for jury findings as to whether a particular tug was in navigation, and whether the petitioner's decedent was a seaman and member of the crew within the meaning of the Jones Act, where the evidence apparently was that the decedent was a man who had been employed as a laborer doing odd jobs around a wharf owned by the man's employer, and that on the morning that the man drowned in unclear circumstances, (1) the tug, which was also owned by the employer and had been withdrawn from navigation because it was inoperable, was lashed to the employer's barge, which in turn was moored to the wharf; (2) the man was engaged in cleaning the boiler of the tug, as part of the tug's rehabilitation preparatory to a Coast Guard inspection, presumably in anticipation of the tug's return to service; and (3) the man was last seen alive running across the barge to the tug.[20]

§ 12. Longshore worker or stevedore

In the following cases, the Supreme Court held or recognized that, since employees who were longshore workers or stevedores were covered exclusively under the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950),[21] such workers were not "seamen" under the Jones Act.

Although several previous Supreme Court cases—decided under circumstances both antedating and subsequent to the effective date of the LHWCA—took the view that longshore workers and stevedores qualified as "seamen" within the meaning of the Jones Act if such employees were injured while engaged on work aboard a vessel in navigable waters,[22] the court ruled in Swanson v Marra Bros., Inc. (1946) 328 US 1, 90 L Ed 1045, 66 S Ct 869, supra § 4[a], that a stevedore, being covered under the LHWCA, was limited to the right to compensation given by the LHWCA and thus could not sue his employer as a Jones Act "seaman."

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[20] The evidentiary circumstances involved in the Butler case were not disclosed in the court's brief per curiam opinion, but were mentioned in the dissent of Justice Harlan, which was joined by Justice Whittaker.

[21] For Supreme Court cases supporting the proposition that the LHWCA exclusion from coverage of any employee who was a "master or a member of a crew" is equivalent to the Jones Act inclusion of any "seaman," see § 4[a], supra.

In affirming a Federal Court of Appeals judgment, the court in The Tungus v Skovgaard (1959) 358 US 588, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280, noted that a maintenance foreman of a company which had been engaged to to handle the discharge of cargo from a vessel was not a "seaman" under the Jones Act.

The Supreme Court stated in Victory Carriers, Inc. v Law (1971) 404 US 202, 30 L Ed 2d 383, 92 S Ct 418, reh den 404 US 1064, 30 L Ed 2d 753, 92 S Ct 731, that longshoremen are not covered by the Jones Act.

> ☆CAUTION: Subsequent to the Supreme Court's decisions in Swanson v Marra Bros., Inc., The Tungus v Skovgaard, and Victory Carriers, Inc. v Law, all supra, it was held in Southwest Marine, Inc. v Gizoni (1991, US) 116 L Ed 2d 405, 112 S Ct 486, supra § 8, that a maritime worker whose occupation was one of those enumerated in the LHWCA could be a "seaman" within the meaning of the Jones Act.

§ 13. Master of vessel

In general, the master of a vessel is the agent and representative of the vessel's owner, and such person is entrusted with the care and management of the vessel.[23] It has been held by the Supreme Court that a master is a "seaman" within the meaning of the Jones Act.

Reversing a judgment by a state's highest court in favor of the owner of a tugboat, the Supreme Court held in Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46, that the master of the tugboat was a "seaman" within the meaning of the Jones Act. The master had been killed on navigable waters through the negligence of a pilot employed to navigate the tug. The court, observing that it had steadily maintained a policy of liberally construing the Jones Act, stated that its concern was to define the meaning of "seaman" by reading the Jones Act in the light of the mischief to be corrected and the end to be attained by enacting it. Congress, said the court, knew that employees on a ship generally were without a remedy in damages, and that such restriction was applicable to officers and masters as well as to ordinary seamen. The court opined that it would stick too closely to the letter if it said that Congress had the will to give damages for wounds or death to the crew at large or their dependents, and to leave the master and his dependents out.

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[22] International Stevedoring Co. v Haverty (1926) 272 US 50, 71 L Ed 157, 47 S Ct 19 (pre-LHWCA); Buzynski v Luckenbach S.S. Co. (1928) 277 US 226, 72 L Ed 860, 48 S Ct 440 (pre-LHWCA); Northern Coal & Dock Co. v Strand (1928) 278 US 142, 73 L Ed 232, 49 S Ct 88 (pre-LHWCA); Nogueira v New York, N. H. & H. R. Co. (1930) 281 US 128, 74 L Ed 754, 50 S Ct 303 (post-LHWCA); Jamison v Encarnacion (1930) 281 US 635, 74 L Ed 1082, 50 S Ct 440 (pre-LHWCA); Uravic v F. Jarka Co. (1931) 282 US 234, 75 L Ed 312, 51 S Ct 111 (pre-LHWCA); Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46 (pre-LHWCA); Puget Sound Stevedoring Co. v State Tax Com. (1937) 302 US 90, 82 L Ed 68, 58 S Ct 72 (post-LHWCA); and South Chicago Coal & Dock Co. v Bassett (1940) 309 US 251, 84 L Ed 732, 60 S Ct 544 (post-LHWCA).

[23] Norris, The Law of Seamen (4th ed) § 25:1.

> ☆ **OBSERVATION:** In McDermott Int'l, Inc. v Wilander (1991) 498 US 337, 112 L Ed 2d 866, 111 S Ct 807, the Supreme Court noted that the rationale stated in Warner v Goltra, supra, for holding that a master of a vessel was a Jones Act "seaman" was "unnecessary," since the court should have realized that the "master or member of a crew" exclusion from the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (33 USCS §§ 901-950), as discussed in § 4[a], supra, further defined Jones Act coverage by restating who a "seaman" was supposed to be. However, the judgment which the Supreme Court reviewed on certiorari in the Warner Case[24] indicates that the master involved was killed in 1926, prior to the enactment of the LHWCA.

§ 14. Piledriver

It has apparently been recognized by the Supreme Court that a piledriver could qualify as a "seaman" for purposes of the Jones Act under particular circumstances.

In reversing a Federal Court of Appeals judgment which had upheld a directed verdict against an individual in a Jones Act suit, and in remanding the case, the Supreme Court ruled in Grimes v Raymond Concrete Pile Co. (1958) 356 US 252, 2 L Ed 2d 737, 78 S Ct 687, that the individual's evidence presented an evidentiary basis for the jury's finding as to whether the individual was a member of a crew of any vessel, where the evidence apparently was that the individual, who was employed as a piledriver on a federal project to construct an offshore platform as part of a radar installation, (1) had been aboard the platform when it was towed out to sea; (2) had assisted in anchoring the platform at its permanent site; and (3) on the day that he was injured, had done some work aboard a construction barge associated with the project.[25]

§ 15. Repairman for seasonal fleet

The Supreme Court has held, under particular circumstances, that an employee who sustained fatal injury during the course of his employment as a repairman for a seasonal fleet of vessels was not a "seaman" for purposes of the Jones Act.

Affirming a Federal Court of Appeals judgment against the mother of a deceased employee who, at the time of his death, was engaged in seasonal repair work of sightseeing motorboats laid up for the winter, the Supreme Court in Desper v Starved Rock Ferry Co. (1952) 342 US 187, 96 L Ed 205, 72 S Ct 216, reh den 342 US 934, 96 L Ed 695, 72 S Ct 374, held that the mother could not recover damages under the Jones Act for the employee's death insofar as the employee was not a Jones Act "seaman." The record showed that, during 1947, the employee prepared the motorboats for their seasonal launching in the spring, and he helped take the boats out of the water when the season closed. For part of the season, he also was employed as a boat operator, after he acquired the necessary operator's license. The employee was terminated in December 1947, but was rehired in March 1948. Testimony at trial indicated that he was to resume his operator's duties when the season opened. However, in April 1948, before the motorboats had been launched for the season and while the employee was engaged in cleaning, painting, and waterproofing the boats, the employee was killed in a work-related accident. Reviewing this evidence, the court stated that the work in which the employee was engaged at the time of his death quite clearly was not that usually done by a "seaman." The boats were not afloat, the court pointed out, and they had neither captain nor crew. The seasonal repairs which the motorboats were undergoing was of the kind that would customarily be done by exclusively shore-based personnel in the case of larger vessels, continued the court. The court noted, moreover, that for a number of reasons, the boats might not be launched, or the employee might not operate a boat if they were launched. Although the employee was a probable navigator in the near future, said the court, the law did not cover probable or expectant seamen but seamen in being.

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[24] Warner v Goltra (1933) 334 Mo 396, 67 SW2d 47.

[25] The evidentiary circumstances involved in the Grimes case were not disclosed in detail in the court's per curiam opinion, but were mentioned more fully in the dissent of Justice Harlan, which was joined by Justice Whittaker.

Consult POCKET PART in this volume for later case service

TRINOVA CORPORATION, Petitioner
v
MICHIGAN DEPARTMENT OF TREASURY

Reported in this volume: p 884, supra.

Holding: Michigan's value added, single business tax, as applied to particular foreign corporation during particular tax year, held not to violate commerce clause (Art I, § 8, cl 3) or due process.

BRIEFS AND APPEARANCES OF COUNSEL

Peter S. Sheldon, of Lansing, Michigan, argued the cause and, with **Thomas D. Hammerschmidt, Jr.** and **Jeffrey V. Stuckey,** both also of Lansing, Michigan, **Benjamin O. Schwendener, Jr.** and **Alan M. Valade,** both of Mason, Michigan, **William F. Sheehan** and **Collette C. Goodman,** both of Washington, D.C., and **Walter Hellerstein,** of Athens, Georgia, filed briefs for petitioner:

Michigan's use of an income apportionment formula to attribute petitioner's value added tax base to the state is unjustifiable in theory and in practice violates the fair apportionment requirement of the due process and commerce clauses.

The Michigan Single Business Tax Act discriminates against out-of-state businesses, in violation of the commerce clause.

Richard R. Roesch, Assistant Attorney General of Michigan, of Lansing, Michigan, argued the cause and, with **Frank J. Kelly,** Attorney General, **Gay Secor Hardy,** Solicitor General, and **Thomas L. Casey,** Assistant Solicitor General, all also of Lansing Michigan, filed a brief for respondent:

The three-factor apportionment formula does not project the state's taxing authority beyond its borders in violation of the due process clause.

The apportionment of value added by a three-factor formula of property, payroll, and sales does not discriminate against out-of-state businesses and the commerce clause does not mandate fission of value added and separate taxation of its fragments.

Patrick R. Van Tiflin, Myra L. Willis, and **James H. Geary** filed a brief for Alcan Aluminum Corporation, et al. as amici curiae urging reversal; and **Don S. Harnack, Richard A. Hanson, Gregory G. Palmer,** and **Carol S. Portman** filed a brief for Caterpillar, Inc. as amicus curiae urging reversal.

Benna Ruth Solomon and **Charles Rothfeld** filed a brief for the Council of State Governments, et al. as amici curiae urging affirmance.

MOSHE GOZLON-PERETZ, Petitioner

v

UNITED STATES

Reported in this volume: p 919, supra.

Holding: Supervised release under § 1002 of Anti-Drug Abuse Act of 1986 (ADAA) held to apply to all § 1002 offenses committed between enactment of ADAA and 1987 effective date of Sentencing Reform Act of 1984.

BRIEFS AND APPEARANCES OF COUNSEL

Peter Goldberger, of El Centro, California, by appointment of the court, 498 US 805, 112 L Ed 2d 13, 111 S Ct 36, argued the cause and, with **Pamela A. Wilk,** filed briefs for petitioner.

Amy L. Wax, of the Department of Justice, Washington, D.C., argued the cause pro hac vice and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Robert S. Mueller, III,** Deputy Solicitor General **William C. Bryson,** and **Richard A. Friedman,** all also of the Department of Justice, Washington, D.C., filed briefs for the respondent.

JAMES A. FORD, Petitioner

v

GEORGIA

Reported in this volume: p 935, supra.

Holding: Georgia's contemporaneous objection rule held not adequate and independent state ground barring federal review of claim under Batson v Kentucky regarding trial which preceded announcement of rule.

BRIEFS AND APPEARANCES OF COUNSEL

Charles J. Ogletree argued the cause and, with **Bryan A. Stevenson, James E. Coleman, Jr.,** and **Joseph E. Killory, Jr.,** of Washington, D.C., argued the cause for petitioner.

Paula K. Smith, Assistant Attorney General of Georgia, of Atlanta, Georgia, argued the cause and, with **Michael J. Bowers,** Attorney General, **William B. Hill, Jr.,** Deputy Attorney General, and **Susan V. Boleyn,** Senior Assistant Attorney General, all also of Atlanta, Georgia, filed a brief for respondent.

FREEPORT-McMoRAN INC., et al., Petitioners

v

K N ENERGY, INC.

Reported in this volume: p 951, supra.

Holding: Addition of nondiverse limited partnership as party after filing of suit in Federal District Court held not to defeat diversity jurisdiction where original parties were diverse.

JOSE M. LOZADA, Petitioner

v

GEORGE DEEDS, Warden

Reported in this volume: p 956, supra.

Holding: Denial of certificate of probable cause for appeal of habeas corpus judgment held error where petitioner alleged that counsel failed to inform him of right to appeal state court convictions.

JIMMIE BURDEN, JR., Petitioner

v

WALTER ZANT, Warden

Reported in this volume: p 962, supra.

Holding: Court of Appeals, in habeas corpus action, held to have improperly failed to give statutory presumption of correctness to state court finding that prosecution witness testified under grant of immunity.

MARK E. DENNIS, Petitioner

v

MARGARET L. HIGGINS, Director, Nebraska Department of Motor Vehicles, et al.

Reported in this volume: p 969, supra.

Holding: Cause of action for violations of Federal Constitution's commerce clause (Art I, § 8, cl 3) held to exist under 42 USCS § 1983.

BRIEFS AND APPEARANCES OF COUNSEL

Richard A. Allen, of Washington, D.C., argued the cause and, with **Kenneth S. Nankin,** also of Washington, D.C., and **Richard L. Spangler, Jr.,** of Lincoln, Nebraska, filed briefs for petitioner:

Petitioner's claim for injunctive relief against state taxes that discriminate in violation of the commerce clause states a claim under 42 USC § 1983 (42 USCS § 1983).

L. Jay Bartel, Assistant Attorney General of Nebraska, of Lincoln, Nebraska, argued the cause and, with **Robert M. Spire,** Attorney General, also of Lincoln, Nebraska, and **Arthur E. Wilmarth, Jr.,** of Washington, D.C., filed a brief for respondent:

Petitioner's claim for violation of the dormant commerce clause is not cognizable under 42 USC § 1983 (42 USCS § 1983), because the commerce clause does not secure any "rights, privileges, or immunities" within the meaning of § 1983.

If the court should determine that § 1983 provides a remedy for violations of the dormant commerce clause, this action should be remanded to allow the Nebraska state courts to determine whether they must entertain a claim under § 1983 in a challenge to a state tax.

Andrew L. Frey, Kenneth S. Geller, Andrew J. Pincus, Daniel R. Barney, Robert Digges, Jr., Laurie T. Baulig, and **William S. Busker** filed a brief for American Trucking Associations, Inc. as amicus curiae urging reversal.

Charles Rothfeld and **Benna Ruth Solomon** filed a brief for the National Conference of State Legislatures, et al. as amici curiae urging affirmance.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, et al., Petitioners

v

TIMOTHY A. BROWN

Reported in this volume: p 991, supra.

Holding: Courts held not required by 29 USCS § 481(c) to evaluate reasonableness of labor union's election campaign rule before deciding whether candidate's request for distribution of campaign literature is reasonable.

BRIEFS AND APPEARANCES OF COUNSEL

W. Michel Pierson, of Baltimore, Maryland, argued the cause and, with **A. Elizabeth Griffith,** also of Baltimore, Maryland, filed briefs for petitioners:

The lower courts erred in holding that § 401(c) of the Labor Management Reporting and Disclosure Act of 1959 [29 USCS § 481(c)] required the granting of Brown's request to distribute campaign literature in violation of the union's reasonable nondiscriminatory rule.

Paul Alan Levy, of Washington, D.C., argued the cause and, with **Alan**

B. Morrison and **Michael E. Tankersley,** both also of Washington, D.C., filed a brief for respondent:

The focus of § 401(c) is on the reasonableness of the request, not on the rule on which the incumbent officers relied in rejecting it.

Even if a request may be denied based on a reasonable rule, there was no rule here and the union's practice was not reasonable.

James A. Feldman, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Deputy Solicitor General **David L. Shapiro,** and **Christine Desan Husson,** all also of the Department of Justice, Washington, D.C., and **Robert P. Davis, Allen H. Feldman, Steven J. Mandel,** and **Mark S. Flynn,** all of the Department of Labor, Washington, D.C., filed a brief for the United States as amicus curiae urging affirmance:

A candidate's right under the Labor Management Reporting and Disclosure Act to have campaign literature distributed by the union is conditioned on the reasonableness of the request for distribution, not on the reasonableness of a union rule restricting such requests.

Walter Kamiat and **Laurence Gold** filed a brief for the American Federation of Labor and Congress of Industrial Organizations as amicus curiae urging reversal.

Michael J. Goldberg, Judith R. Schneider, Clyde W. Summers, Helen Hershkoff, John A. Powell, and **Susan Goering** filed a brief for the Association for Union Democracy, et al. as amici curiae urging affirmance.

GENE McNARY, Commissioner of Immigration and Naturalization, et al., Petitioners

v

HAITIAN REFUGEE CENTER, INC., et al.

Reported in this volume: p 1005, supra.

Holding: District Court held not precluded by 8 USCS § 1160(e) from exercising jurisdiction over action alleging due process violations by INS in administration of amnesty program for alien farm workers.

BRIEFS AND APPEARANCES OF COUNSEL

Michael R. Dreeben, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Stuart M. Gerson,** Deputy Solicitor General **David L. Shapiro,** and **David V. Bernal,** all also of the Department of Justice, Washington, D.C., filed briefs for petitioners:

The Immigration Reform and Control Act of 1986 (IRCA) precludes the exercise of general District Court jurisdiction over any determination respecting an application for adjustment of status.

Respondents' complaint challenges determinations respecting applications for adjustment of status, and therefore cannot be brought in this action.

No jurisdictional exception exists under IRCA for actions alleging a "pattern and practice" of misconduct.

Ira J. Kurzban, of Miami, Florida, argued the cause and, with **Bruce J. Winick** and **Irwin P. Stotzky,** both also of Miami, Florida, **Edward Copeland** and **Linda Bosniak,** both of New York City, **Robert A. Williams,** and **Cheryl A. E. Little,** filed a brief for respondents:

There is a strong presumption of judicial review of administrative action, particularly when constitutional claims are involved.

Petitioners have not overcome the presumption in favor of judicial review in this case.

Joseph R. Austin, John K. Van de Kamp, Attorney General of California, **Andrea Sheridam Ordin,** Chief Assistant Attorney General, **Fredric D. Woocher, Robert A. Ginsberg, Niels Frezen, John B. Emerson, Jorge L. Fernandez,** and **Richard K. Mason** filed a brief for the state of California, et al. as amici curiae urging affirmance; **John J. Curtin, Jr., Robert E. Juceam, William McGuinness, Sandra M. Lipsman, Craig H. Baab,** and **Carol L. Wolchok** filed a brief for the American Bar Association as amicus curiae urging affirmance; **Michael Rubin, Marsha S. Berzon,** and **Laurence Gold** filed a brief for the American Federation of Labor and Congress of Industrial Organizations as amicus curiae urging affirmance; and **Peter A, Schey, Carlos Holguin, Wayne H. Matelski, Monte B. Lake, William Tamayo, Ralph Santiago Abascal, Stephen A. Rosenbaum, Pauline Gee, Robert Gibbs, Stewart Kwoh,** and **Richard Garcia** filed a brief for the Farm Labor Alliance, et al. as amici curiae urging affirmance.

ROBERT MADDEN, Applicant

v

TEXAS (No. A-626)

DAVID WAYNE DeBLANC, Applicant

v

TEXAS (No. A-627)

ALVIN URIAL GOODWIN, Applicant

v

TEXAS (No. A-628)

BRIEFS OF COUNSEL

KARL HAMMOND, Applicant

v

TEXAS (No. A-635)

Reported in this volume: p 1026, supra.

Holding: Extensions of time to file petitions for writs of certiorari in capital murder cases granted for 30 days in 3 cases, and denied in 1 case, by Scalia, J.

Annotation: p 1278, infra.

MADDEN v TEXAS

Reported p 1026, supra

ANNOTATION

TIME REQUIREMENTS UNDER SUPREME COURT RULE 13 (AND SIMILAR PREDECESSORS) FOR PETITIONS FOR WRIT OF CERTIORARI—SUPREME COURT CASES

by

David B. Sweet, J.D.

§ 1. Introduction
  [a] Scope
  [b] Related matters
  [c] Text of Rule 13
§ 2. Summary and comment
§ 3. Supreme Court's discretion to waive time limits
  [a] General view that Supreme Court has such discretion
  [b] Particular circumstances as warranting waivers
§ 4. Extensions of time by individual Justice under rule
§ 5. Time for filing petition as affected by petition or suggestion for rehearing in court below

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

32A Am Jur 2d, Federal Practice and Procedure §§ 755-763

Annotations: See the related matters listed in the annotation.

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review §§ 3:178-3:186; 9 Federal Procedure, L Ed, Criminal Procedure § 22:1245

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review §§ 3:848, 3:849, 3:884

11A Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2491, 2492

USCS Court Rules, Supreme Court Rules, Rule 13

L Ed Digest, Appeal §§ 874.5, 882(2), 882(3), 882(5), 886, 887, 1234.5

L Ed Index, Certiorari

ALR Index, Appeal and Error; Certiorari

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§ 1. Introduction

[a] Scope

This annotation[1] collects and analyzes the United States Supreme Court cases which have made a determination, either in general or as applied to specific circumstances, concerning the construction or application of the Supreme Court's Rule 13 (and similar predecessor provisions),[2] which prescribes the time requirements for filing with the Supreme Court a petition for a writ of certiorari to review a judgment of a state court or a lower federal court.[3]

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[1] The present annotation supersedes the annotation at 28 L Ed 2d 960.

[2] This annotation includes cases under former Rule 22, effective on July 1, 1954 (see 98 L Ed at p 18 following p 1197), which rule in effect was later renumbered by the adoption of a successor Rule 20, effective on June 30, 1980 (see 63 L Ed 2d at xxxviii), which rule in effect was later renumbered by the adoption of a successor Rule 13, effective on January 1, 1990, together with any pertinent amendments to those rules. As to the text of Rule 13, see § 1[c], infra.

[3] This annotation excludes cases which merely mention that certiorari is pending, but which do not refer expressly to Rule 13 or one of its predecessors. Also, this annotation excludes cases which merely cite, quote, or paraphrase Rule 13 or one of its predecessors, without making any determination concerning the construction or application of the rule. In addition, being limited to cases under Rule 13 and its predecessors, this annotation does not discuss, except to the extent necessary to cover Rule 13

[b] Related matters

Stay of execution of death sentence by Supreme Court or Justice thereof. 78 L Ed 2d 914.

Construction and application of Rule 23 [predecessor of Rule 14] of Rules of Supreme Court prescribing requirements of petition for certiorari. 32 L Ed 2d 830.

When will Supreme Court dismiss writ of certiorari as improvidently granted. 30 L Ed 2d 829.

What judgment or decree of state court in civil cases is final for purpose of review by United States Supreme Court under 28 USC § 1257 and similar predecessors. 29 L Ed 2d 872.

Construction and application of Federal Criminal Procedure Rule 45(b) authorizing courts to enlarge period prescribed for doing act or to permit act to be done after expiration of such period. 4 L Ed 2d 1854.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appellate review. 61 ALR2d 482.

Applicability of statute of limitations or doctrine of laches to certiorari. 40 ALR2d 1381.

Amendment of judgment as affecting time for taking or prosecuting appellate review proceedings. 21 ALR2d 285.

Motion or petition for rehearing in court below as affecting time within which appellate proceedings must be taken or instituted. 10 ALR2d 1075.

[c] Text of Rule 13

The following is the text of Supreme Court Rule 13:

Rule 13. Review of Certiorari; Time for Petitioning

.1. A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort, a United States court of appeals, or the United States Court of Military Appeals shall be deemed in time when it is filed with the Clerk of this Court within 90 days after the entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review.

.2. A Justice of this Court, for good cause shown, may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days.

.3. The Clerk will refuse to receive any petition for a writ of certiorari which is jurisdictionally out of time.

.4. The time for filing a petition for a writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a petition for rehearing is timely filed in the lower court by any party in the case, the time for filing the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or the entry of a subsequent judgment. A suggestion made to a United States court of appeals for a rehearing in banc pursuant to Rule 35(b), Federal Rules of Appellate Procedure, is not a petition for rehearing within the meaning of this Rule.

.5. A cross-petition for a writ of certiorari shall be deemed in time when it is filed with the Clerk as provided in paragraphs .1, .2, and .4 of this Rule, or in Rule 12.3. However, a

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and its predecessors, questions arising under other Supreme Court rules, federal statutes, other court rules, or other provisions of federal or state law.

cross-petition **which, except for Rule** 12.3, would be untimely, will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

.6. An application to extend the time to file a petition for a writ of certiorari must set out the grounds on which the jurisdiction of this Court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion and any order respecting rehearing, and must set forth with specificity the reasons why the granting of an extension of time is thought justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a petition for a writ of certiorari is not favored.

§ 2. Summary and comment

A number of questions have arisen in Supreme Court cases construing or applying the time requirements under Supreme Court Rule 13 (and similar predecessor provisions) for filing a petition for a writ of certiorari to review a judgment of a state court or a lower federal court. The Supreme Court has stated that the rule's time limits are not jurisdictional—at least to the extent that the limits are set by the rule, rather than by some underlying jurisdictional statute—and has generally determined that the court in such circumstances has discretion to waive the strict application of a time limit set by the rule (§ 3[a], infra). In particular cases (§ 3[b], infra), the Supreme Court has granted a waiver of a time limit set by Rule 13 or one of its predecessors, where the court has determined that such circumstances were involved as (1) a desire to avoid "wasteful circuity" with respect to the underlying motion for relief; (2) the existence of unchallenged, supporting affidavits which presented facts showing that the petitioner had acted in good faith and that the delay in filing the petition for certiorari had been brought about by circumstances beyond the petitioner's control; (3) the filing of a petition for certiorari within 3 weeks of the receipt of a copy of a lower court's denial of a petition for rehearing, after months had passed without any word from the lower court, despite the lower court's statement that it would notify the petitioner of any action; (4) the filing of a petition for certiorari one day out of time; or (5) the existence of supporting affidavits indicating that an indigent accused's court-appointed lawyer had failed to answer the accused's letters and had failed to file a timely petition for certiorari, despite the lawyer's assurance that such a filing would be made.

In addition, Rule 13 and its predecessors have expressly authorized an individual Supreme Court Justice, for good cause shown, to grant an extension of the time to file a petition for a writ of certiorari. Given that Rule 13 and its predecessors, however, have also included a provision that applications for such extensions are not favored, individual Justices have generally rejected such claimed grounds for extension (§ 4, infra) as (1) counsel's caseload due to the pendency of other cases in the state courts or lower federal courts; (2) the addition of another counsel in the case at hand; (3) an alleged need for more time to research; (4) the withdrawal of appellate counsel, where there was no indication that withdrawal was a reasonably unforeseeable occurrence; or (5) "state budgetary cuts" resulting in a reduction in a state's appellate staff. An individual Justice, however, has sometimes granted a limited extension of less than the maximum number of days allowed by the rule (§ 4, infra), in circumstances such as a situation in which the Justice believed that (1) the Justice might be instituting a stricter extension-limiting policy than heretofore followed; or (2) the grant of a few days of grace would still give the Supreme Court an opportunity to dispose of the petition for certiorari before the end of the term.

Supreme Court cases have generally supported the view that for purposes of Rule 13 or its predecessors, where a timely petition for rehearing has been filed in the lower court, the time for filing a petition for certiorari begins to run on the date that rehearing is denied or that a new judgment is entered on the rehearing, rather than on the date of the lower court's initial decision (§ 5, infra). The Supreme Court has also indicated, however (§ 5, infra), that the later date will not be used for time calculations, where (1) a suggestion for rehearing en banc is presented to a Federal Court of Appeals without also including a petition for rehearing by the Court of Appeals panel which initially decided the case; (2) a petition for rehearing seeks only to correct a formal defect in the judgment or opinion of the lower court; or (3) it appears that the lower court has granted rehearing or has amended the court's original order solely for the purpose of extending the time for filing a petition for certiorari.

§ 3. Supreme Court's discretion to waive time limits

[a] General view that Supreme Court has such discretion

The following Supreme Court cases support the general view that the Supreme Court has discretion to waive a time limit set by Supreme Court Rule 13 (or a similar predecessor provision) for filing a petition for a writ of certiorari: Heflin v United States (1959) 358 US 415, 3 L Ed 2d 407, 79 S Ct 451; Taglianetti v United States (1969) 394 US 316, 22 L Ed 2d 302, 89 S Ct 1099, 69-1 USTC ¶ 9295, 23 AFTR 2d 69-995; Schacht v United States (1970) 398 US 58, 26 L Ed 2d 44, 90 S Ct 1555; Durham v United States (1971) 401 US 481, 28 L Ed 2d 200, 91 S Ct 858 (ovrld on other grounds by Dove v United States, 423 US 325, 46 L Ed 2d 531, 96 S Ct 579); Sanabria v United States (1978) 437 US 54, 57 L Ed 2d 43, 98 S Ct 2170; and Wilkins v United States (1979) 441 US 468, 60 L Ed 2d 365, 99 S Ct 1829.

Although affirming on the merits a Federal Court of Appeals' judgment which had upheld an accused's federal criminal convictions, the Supreme Court held in Taglianetti v United States (1969) 394 US 316, 22 L Ed 2d 302, 89 S Ct 1099, 69-1 USTC ¶ 9295, 23 AFTR 2d 69-995, that, while the accused's petition for certiorari had not been filed within the time allowed by Supreme Court Rule 22(2) (predecessor of Rule 13), the time limitation was not jurisdictional and did not bar the Supreme Court's exercise of discretion to consider the case.

In Schacht v United States (1970) 398 US 58, 26 L Ed 2d 44, 90 S Ct 1555, the Supreme Court held that the time-limit requirement under Supreme Court Rule 22(2) (predecessor of Rule 13) to file a petition for certiorari to review a Federal Court of Appeals' judgment in a criminal case was not jurisdictional and could be waived by the Supreme Court. According to the court, Rule 22(2) contained no language that called for a nonwaiver interpretation. The court continued that Rule 22(2) was not enacted by Congress, but was promulgated by the Supreme Court under the authority of Congress to prescribe rules concerning the time limitations for taking appeals and applying for certiorari in criminal cases. The procedural rules adopted by the Supreme Court for the orderly transaction of the court's business were not jurisdictional and could be relaxed by the court in the exercise of the court's discretion when the ends of justice so required, the court observed. While the Supreme Court recognized that Heflin v United States and Taglianetti v United States—both supra—in declaring such discretion, had dealt with the issue only in footnotes, the court determined that such circumstance (1) was no reason to disregard the two cases' holdings; and (2) in fact indicated that the court had deemed a footnote adequate treatment to give the issue.

[b] Particular circumstances as warranting waivers

The Supreme Court, under the particular circumstances presented in the following cases, waived a time limit set by Supreme Court Rule 13 (or a similar predecessor provision) for filing a petition for a writ of certiorari.

In Heflin v United States (1959) 358 US 415, 3 L Ed 2d 407, 79 S Ct 451, the Supreme Court, reversing a Federal Court of Appeals' judgment which had upheld an accused's federal criminal conviction, (1) held that relief was available to the accused under the Federal Rules of Criminal Procedure, which authorized the correction of an illegal sentence; (2) agreed to dispense with the time requirements of Supreme Court Rule 22(2) (predecessor of Rule 13); and (3) observed that dispensing with Rule 22(2)'s requirements would avoid "wasteful circuity," because (a) successive motions could be made under the Rules of Criminal Procedure, and (b) no jurisdictional statute was involved.

Even though the Supreme Court recognized that an accused's petition for certiorari to review a Federal Court of Appeals' judgment affirming the accused's federal criminal conviction had been filed 101 days after the expiration of the appropriate filing period under Supreme Court Rule 22(2) (predecessor of Rule 13), the Supreme Court, reversing the Court of Appeals' judgment on the merits, held in Schacht v United States (1970) 398 US 58, 26 L Ed 2d 44, 90 S Ct 1555, that the Supreme Court's discretion to waive the nonjurisdictional time limit of Rule 22(2) would be exercised, where the court reasoned that (1) when the accused's petition for certiorari had been filed, the petition had been accompanied by a motion asking the court to grant certiorari despite the time problem; (2) the accompanying affidavits, not denied or challenged by the Federal Government, had presented facts showing that the accused had acted in good faith and that the delay in filing the petition had been brought about by circumstances beyond the accused's control; (3) without detailing those circumstances, it was sufficient to note that after consideration of the motion and affidavits, the Supreme Court had granted the motion, with three Justices dissenting;[4] (4) the Supreme Court's decision to waive the time defect and to permit the untimely filing had thus been made several months earlier; and (5) no new facts warranting a reconsideration had been presented.

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[4] See Schacht v United States (1969) 396 US 984, 24 L Ed 2d 449, 90 S Ct 482 (a memorandum decision).

The Supreme Court, vacating a Federal Court of Appeals' judgment against an accused, and remanding the case to a Federal District Court with directions to dismiss the indictment against the accused, held in Durham v United States (1971) 401 US 481, 28 L Ed 2d 200, 91 S Ct 858 (ovrld on other grounds by Dove v United States, 423 US 325, 46 L Ed 2d 531, 96 S Ct 579), that, even though the accused's petition for certiorari was out of time under Supreme Court Rule 22(2) (predecessor of Rule 13), timeliness under the Supreme Court's Rules presented no jurisdictional question, and a waiver of Rule 22 was proper on the facts, where the Supreme Court observed that (1) after the Court of Appeals had affirmed the accused's federal criminal conviction, the accused had filed a timely petition for rehearing; (2) the accused, upon inquiry to the Court of Appeals, had been informed that he would be notified of the disposition of the rehearing petition as soon as the court acted; (3) when several months had passed without any word, the accused had written the Court of Appeals; (4) in reply, the accused had received a copy of an order dated about 5 months earlier, which order had denied the accused's petition for rehearing; and (5) within 3 weeks of receipt of that denial, the accused's petition for certiorari had been docketed in the Supreme Court.

Reversing a Federal Court of Appeals' judgment against an accused in a federal criminal case, the Supreme Court in Sanabria v United States (1978) 437 US 54, 57 L Ed 2d 43, 98 S Ct 2170, granted the accused's motion, which had been accompanied by affidavits, to waive the time requirements of Supreme Court Rule 22(2) (predecessor of Rule 13) with respect to the accused's petition for certiorari, where the Supreme Court observed that (1) the accused's petition had been filed one day out of time; and (2) Rule 22(2)'s time requirement was not jurisdictional.

Even though the Supreme Court recognized that an accused's filing of a petition for certiorari to review a Federal Court of Appeals' judgment affirming the accused's federal criminal convictions was 17 months out of time as a conventional petition for certiorari under Supreme Court Rule 22(2) (predecessor of Rule 13), the Supreme Court, in Wilkins v United States (1979) 441 US 468, 60 L Ed 2d 365, 99 S Ct 1829, held that the accused's petition was not a conventional petition for certiorari, agreed with a recommendation of the United States Solicitor General, granted the accused's motion for leave to proceed in forma pauperis, granted the accused's petition for certiorari, vacated the Court of Appeals' judgment, and remanded the case to the Court of Appeals for further proceedings including the reentry of the Court of Appeals' judgment and, if appropriate, appointment of counsel to assist the accused in seeking timely review of that judgment before the Supreme Court. The Supreme Court observed that the accused's factual allegations, which were supported by the accused's affidavit and the affidavits of his wife and his minister, indicated that (1) the accused had asked his court-appointed lawyer to file a timely petition for certiorari; (2) about 3 months after the Court of Appeals' judgment had been entered, the accused had received an assurance from the lawyer that this request would be honored; (3) about 10 months later, the accused had written to the Supreme Court's clerk to inquire about his case and had learned that no such petition had ever been filed; (4) the accused had then written several letters to his lawyer; and (5) the letters had never been answered. Although the Supreme Court recognized that the accused could have presented his dilemma to the Court of Appeals, the Supreme Court reasoned that the Court of Appeals, the Solicitor General, and the Supreme Court all had a strong interest in insuring that lawyers appointed to aid indigents discharged their responsibilities fairly, yet the accused's story of his appointed lawyer's indifference to his legitimate request for help was "all too familiar," and the accused's decision to apply directly to the Supreme Court under such circumstances was understandable.

§ 4. Extensions of time by individual Justice under rule

Under Supreme Court Rule 13.2 (and similar predecessor provisions), an individual Justice may, for good cause shown, extend the time for filing a petition for a writ of certiorari, but Rule 13.6 specifies that such an extension of time is not favored. In the following cases, individual Justices either (1) rejected applications for such extensions, or (2) granted limited extensions in special circumstances.

In Knickerbocker Printing Corp. v United States (1954, US) 99 L Ed 1292, 75 S Ct 212, Justice Jackson, as Circuit Justice for the Second Circuit, extended for 20 days the time to file a petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit, where the Justice observed that (1) the Supreme Court had recently revised the requirements for petitions for certiorari to eliminate some of the most frequent causes of unavoidable delays; and (2) after due consideration, the court had provided in Supreme Court Rule 22 (predecessor of Rule 13) that an application to extend the time to file a petition for a writ of certiorari was not favored; but (3) under the old rules, he had been notably lenient in granting extensions of time; and (4) the revised rules were so new that perhaps there had not been adequate warning to the Second Circuit that such policy of leniency would not prevail in the future. According to the Justice, applications for such extensions were commonly made ex parte, almost on the eve of the time sought to be extended, when (1) there was no time to hear the adversary whose cause was postponed, and (2) denial would preclude the litigant from seeking review. The Justice, noting that the application in question gave no reason for an extension other than that the applicant's attorneys had been engaged in the matters previously scheduled for trial before state and lower federal courts, said that he did not see how, consistently with Rule 22, counsel's business in lower courts could be accepted as a reason for extension. When more business becomes concentrated in one firm than it can handle, the Justice reasoned, the firm has two "obvious" remedies: (1) to put on more legal help; or (2) to let some of the business go to offices which have time to attend to it. While the Justice expressed doubt whether any court should be a party to encouraging the accumulation of more business in one law office than it could handle in due course, the Justice said that this was especially true of the Supreme Court, whose only reason for considering this case would be its public importance, whereas it raised doubt whether a case had such great importance if the case was not worthy of the attention of some attorney to prepare forthwith a petition for certiorari. In the case at hand, the Justice noted, a constitutional question was said to be involved; if so, it ought to be reviewed promptly and not delayed because counsel found it to their advantage to attend to other matters pending in lower courts. The Justice asked Second Circuit publications to give notice to the profession in the Second Circuit that counsel's business in the lower federal courts was not an acceptable reason for extension.

See Carter v United States (1955, US) 100 L Ed 1508, 75 S Ct 911, where Justice Frankfurter, as individual Justice, denied an application to extend the time for filing a petition for certiorari to review a Federal Court of Appeals' judgment, and where the Justice, apparently referring to Supreme Court Rule 22 (predecessor of Rule 13), observed that this was a criminal case concerning which the Supreme Court's Rules had clearly manifested a public policy of expeditious disposition, and that, although the time for filing a petition for certiorari could be extended where real cause was made to appear, no such showing had been made in the case at hand. The Justice noted that (1) the point sought to be raised was one that had been unsuccessfully urged on the Court of Appeals; (2) after a decision had there been handed down, a petition for rehearing had been filed in that court and had been denied; (3) the issue had been fully canvassed by the Court of Appeals; (4) the issue had "doubtless" been adequately briefed and argued by counsel; and (5) the nature and substantiality of the point in controversy emerged from the Court of Appeals' opinion. The Justice continued that none of the considerations that were urged for an extension of time were persuasive. According to the Justice, the addition of another counsel hardly afforded a ground, where counsel who urged the point below was the counsel here. In addition, the Justice found no force in the claim that both counsel were regularly engaged in criminal practice. While the Justice recognized that an appropriate extension might be afforded if both counsel were actively engaged in the trial of a cause during the relevant period, the Justice said that generally speaking, and barring such exceptional situations, the responsibility of counsel to litigation in the Supreme Court ought to take precedence, on the assumption that the issue sought to be raised was of such significance as to call for review by the Supreme Court. The Justice added that counsel might be appropriately reminded that the requirements of the Supreme Court's rules regarding the contents of a petition for certiorari seldom called for the kind of research which might be demanded for a brief on the merits. In a situation like the present, the Justice reasoned, a showing of the required importance ought not to take more than a day or two on the part of competent counsel, particularly one previously responsible for the cause.

See also Brody v United States (1957, US) 1 L Ed 2d 1130, 77 S Ct 910, where Justice Frankfurter, as individual Justice, granted a limited extension of the time to file a petition for a writ of certiorari to review a Federal Court of Appeals' judgment in a criminal contempt case, and where the Justice, apparently referring to Supreme Court Rule 22 (predecessor of Rule 13), reasoned that (1) important reasons of public policy required a timely filing of a petition for certiorari in such a case; (2) an extension of the time limit ought to be granted only in those exceptional circumstances in which the policy behind the general rule was properly to be subordinated to a more compelling policy; (3) counsel's engagement in litigation was not such a circumstance; (4) too frequent was the suggestion of counsel asking for an extension that more time was required for "research" on the questions to be presented in the petition for certiorari; (5) the application would be denied outright, were it not that the time was about to expire, and that the application had been filed at the last minute; and (6) under the circumstances, a few days of grace would be granted. The Justice said that he saw "not the slightest reason" why a wholly adequate petition—in typewritten form if necessary—could not be prepared in time to be filed within 5 days of the Justice's decision, a result which would give the Federal Government an opportunity for a response and the Supreme Court an opportunity to dispose of the petition before the end of the term. According to the Justice, one of the most obdurate defects in the administration of justice was delay. The Justice observed that it did not require heavy research to charge the understanding of the Supreme Court on the gravity of the issue on which review was sought and to prove to the court the appropriateness of granting a petition for certiorari, particularly when the controlling ground on which the petition was to be based had been given the consideration that had been given in the case at hand. The Justice, noting that he had heretofore acted on the attitude expressed in this opinion with respect to similar applications, said that he had spelled out his attitude in some detail for the special attention of the bar of the First Circuit.

Under Supreme Court Rule 20.6 (predecessor of Rule 13), requests for extensions of time to file petitions for certiorari were not favored, Justice Scalia, as Circuit Justice, observed in Kleem v INS (1986) 479 US 1308, 93 L Ed 2d 566, 107 S Ct 484, and the Justice, pursuant to the Supreme Court's rules, denied an application for an extension of time within which to file a petition for a writ of certiorari to review a Federal Court of Appeals' judgment in a civil case, where the Justice observed that counsel for the applicants had given no other reason for his request other than his desire for additional time to research constitutional issues. According to the Justice, the same reason could be adduced in virtually all cases, and the reason did not meet the standard of "good cause shown" for the granting of a disfavored extension.

In Madden v Texas (1991) 498 US 1301, 112 L Ed 2d 1026, 111 S Ct 902, Justice Scalia, as Circuit Justice for the Fifth Circuit, granted 30-day extensions under Supreme Court Rule 13 to file petitions for writs of certiorari in three of four cases, and denied an extension in the fourth case. The Justice observed that in each case, (1) a state's court of criminal appeals, after affirming an accused's capital murder conviction and death sentence, had denied a petition for rehearing; and (2) a few days before Rule 13.1's limit for filing a petition for certiorari, a lawyer affiliated with a resource center, on behalf of the accused, had requested a 60-day extension. While the Justice recognized that Rule 13.2 authorized him "for good cause shown" to extend the filing time for a period not to exceed 60 days, the Justice observed that, under Rule 13.6, an application for such an extension was not favored, and the Justice said that none of the four applications, as an original matter, would meet the standard of "good cause shown." The Justice reasoned that (1) the desire in one case for the assistance of the resource center was entirely unremarkable, as all petitioners could honestly claim that they would benefit from additional advice and consultation; (2) the excuse put forward in the other cases—namely, the withdrawal of appellate counsel—did not automatically justify an extension; (3) there was an even greater need in capital cases than elsewhere to reject such an automatic rule, since no lawyer ought to be burdened with the knowledge that if only the lawyer would withdraw, the client's appeal could be lengthened and execution in all likelihood could be deferred; (4) there was no indication in any of the three cases that withdrawal was a reasonably unforeseeable occurrence; and (5) the fact requiring withdrawal in one case—namely, membership in the United States Congress—was of such a nature that it must have been anticipated before the petition for rehearing had been denied. While the Justice observed that an additional reason set forth in one application—namely, the death of counsel's father—would in some circumstances qualify as "good cause shown," the Justice said that the counsel in question was not one who had been working diligently on the petition and had been prevented by the death from completing the work, but rather a resource center attorney who, because no other counsel had been found since the unexplained withdrawal of appellate counsel, intended to prepare the applicant's petition. The Justice noted that there was no indication why some other resource center attorney could not have undertaken this last-minute task, nor why the task had been left to the last minute. According to the Justice, capital cases had not been made a generic exception to the 90-day time limit, and the Justice did not have authority to create such an exception through his power to grant case-by-case extensions. The Justice, however, found good cause to grant 30-day extensions in three cases, because (1) he had not previously had an opportunity in his capacity as Circuit Justice for the Fifth Circuit to set forth his views on the application of the Rule 13.2 standard; (2) it was possible that those views were more restrictive of extensions than the Fifth Circuit bar had been accustomed to; and (3) the cases were capital cases. As to the fourth case, in which the execution date had been set for 2 days after the end of the regular 90-day period, the Justice found inadequate cause, for, according to the Justice, extending the filing period to a point after an established execution date was either futile or would disrupt the state's orderly administration of justice.

Subsequently, in Mississippi v Turner (1991) 498 US 1306, 112 L Ed 2d 1172, 111 S Ct 1032, Justice Scalia, as Circuit Justice, denied, under Supreme Court Rule 13, a state's request for a 30-day extension of time within which to file a petition for a writ of certiorari to review a state court's judgment in what was apparently a criminal case, where the state submitted that the extension was required due to "state budgetary cuts" which had resulted in a reduction of appellate staff. Rule 13.1 set a 90-day filing limit for such cases, the Justice observed, and the Justice continued that, while Rule 13.2 authorized him "for good cause shown" to extend the filing time for a period not to exceed 60 days, an application for such an extension was not favored, pursuant to Rule 13.6. The Justice said that counsel's overextended caseload was not "good cause shown," unless it was the result of events unforeseen and uncontrollable by both counsel and client, which was not so in the case at hand, as the state, like any other litigant, had to choose between hiring more attorneys and taking fewer appeals. According to the Justice, the state's budget allocations could not—and the Justice was sure were not expected to—alter the Supreme Court's filing requirements.

§ 5. Time for filing petition as affected by petition or suggestion for rehearing in court below

In the following Supreme Court cases, it was generally held or recognized—subject to some limited exceptions—that, for purposes of Supreme Court Rule 13 (or similar predecessor provisions), the time for filing a petition for a writ of certiorari began to run at the time of the denial of a petition for rehearing in a court below.

The Supreme Court recognized in United States v Healy (1964) 376 US 75, 11 L Ed 2d 527, 84 S Ct 553, which generally involved the timeliness of an appeal in a criminal case by the Federal Government under a Supreme Court rule other than Rule 22 (predecessor of Rule 13), that Rule 22 was consistent with a "traditional and virtually unquestioned practice" that the time period in civil and criminal cases began to run from the denial of a petition for rehearing in the court below, so that a rehearing petition, at least when filed within the original period of review, might extend the time for filing a petition for certiorari. The court noted, however, that the record in the case at hand indicated the good faith of the government in petitioning for rehearing.

Similarly, in Federal Deposit Ins. Corp. v Mallen (1988) 486 US 230, 100 L Ed 2d 265, 108 S Ct 1780, the Supreme Court, in discussing a mootness issue in a federal civil case, recognized that under Supreme Court Rule 20.1 (predecessor of Rule 13), the time for filing a petition for certiorari began to run on the date on which a Federal Court of Appeals denied a petition for rehearing and suggestion for rehearing en banc.

It has been the Supreme Court's consistent practice (expressly incorporated into Supreme Court Rule 13.4) to treat petitions for rehearing timely presented to the Federal Courts of Appeals as tolling the start of the period in which certiorari must be sought until rehearing is denied or a new judgment is entered on the rehearing, the Supreme Court observed in Missouri v Jenkins (1990) 495 US 33, 109 L Ed 2d 31, 110 S Ct 1651, but the Supreme Court continued that (1) it has also been the court's consistent practice (likewise incorporated into Rule 13.4) to treat suggestions for rehearing en banc presented to the Courts of Appeals, which suggestions did not also include petitions for rehearing by the Court of Appeals panel which initially decided the case, as not tolling the period for seeking certiorari; (2) the tolling practice did not extend to petitions for rehearing seeking only to correct a formal defect in the judgment or opinion of the lower court, for in such cases, no alteration of rights is asked, and the finality of the lower court's first order is never suspended; and (3) the time for applying for certiorari would not be tolled when it appeared that a lower court had granted rehearing or had amended its order solely for the purpose of extending that time. With respect to the civil case at hand, the Supreme Court held that a state's petition for certiorari was timely, where the court determined that the petition was subject to a statutory 90-day limit, and where the record showed that (1) after an unfavorable decision on August 19, 1988 by a Court of Appeals panel, the state had filed a petition for rehearing en banc, and two other parties had filed petitions; (2) on October 14, 1988, the Court of Appeals had issued an order (a) saying that there were three petitions for rehearing en banc pending, and (b) denying all petitions for rehearing en banc; (3) on January 14, 1989, the Court of Appeals had issued an order amending the October 14 order nunc pro tunc effective on October 14, so that the order as amended (a) said that there were three petitions for rehearing with suggestions for rehearing en banc pending, and (b) denied the petitions for rehearing and petitions for rehearing with suggestions for rehearing en banc; and (4) the state's petition for certiorari had been filed within 90 days of October 14, 1988. The Supreme Court ruled that the state's petition for rehearing en banc, for which there was technically no provision in the Federal Rules of Appellate Procedure, qualified for treatment as a petition for rehearing before the panel, as well as a suggestion for rehearing en banc, because the Court of Appeals had so interpreted and had so actually treated the state's filing. While the Supreme Court cautioned that the Court of Appeals could not make the record what it was not, the Supreme Court determined that the nunc pro tunc order had not made such a change. On the merits, the Supreme Court affirmed in part and reversed in part the Court of Appeals' judgment, and remanded the case.

In addition, the following Supreme Court cases, through their calculations of the time available, also appear to support the view that, for purposes of Supreme Court Rule 13 (or a similar predecessor provision), the time for filing a petition for a writ of certiorari begins to run on the date of a denial of a petition for rehearing in the court below: Carter v United States (1955, US) 100 L Ed 1508, 75 S Ct 911 (by Justice Frankfurter, as individual Justice), supra § 4; Durham v United States (1971) 401 US 481, 28 L Ed 2d 200, 91 S Ct 858 (ovrld on other grounds by Dove v United States, 423 US 325, 46 L Ed 2d 531, 96 S Ct 579), supra § 3; and Madden v Texas (1991) 498 US 1301, 112 L Ed 2d 1026, 111 S Ct 902 (by Justice Scalia, as Circuit Justice), supra § 4.

Consult POCKET PART in this volume for later case service

OKLAHOMA TAX COMMISSION, Petitioner

v

CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA

Reported in this volume: p 1112, supra.

Holding: Oklahoma held empowered to collect taxes on sales of cigarettes to nontribal members on land held in trust for Indian tribe by United States, but tribe held immune from suit.

BRIEFS AND APPEARANCES OF COUNSEL

David Allen Miley, of Oklahoma City, Oklahoma, argued the cause and with **Joe Mark Elkouri,** also of Oklahoma City, Oklahoma, filed briefs for petitioner:

State taxes are applicable to sales of cigarettes and other items at the tribal store.

Tribal sovereignty cannot be maintained as a defense to the state lawsuit to enforce its right to collect taxes.

Edwin S. Kneedler, of the Department of Justice, Washington, D.C., argued the cause and, with Solicitor General **Kenneth W. Starr,** Assistant Attorney General **Richard B. Stewart,** Deputy Solicitor General **Lawrence G. Wallace,** and **Robert L. Klarquist,** all also of the Department of Justice, Washington, D.C., filed a brief for the United States as amicus curiae urging reversal:

The petition for a writ of certiorari should be granted insofar as petitioner seeks review of that portion of the judgment of the Court of Appeals addressing the Tribe's request for injunctive relief, that portion of the judgment should be summarily vacated, and the case should be remanded to the Court of Appeals for further consideration of the Tribe's request for injunctive relief.

The petition for a writ of certiorari should be denied insofar as it seeks review of the portion of the judgment below that directs dismissal of the Commission's counterclaim on sovereign immunity grounds.

Michael Minnis, of Oklahoma City, Oklahoma, argued the cause and, with **David McCullough,** also of Oklahoma City, Oklahoma, and **G. Lindsay Simmons,** of Washington, D.C., filed a brief for respondent:

Absent congressional authorization, states have no power to tax Indian tribes.

The commission's counterclaim is barred by tribal sovereign immunity.

Melody L. McCoy, Yvonne Teresa Knight, Kim Jerome Gottschalk, Reid P. Chambers, Jeanne S. Whiteing, Robert S. Thompson, III, Thomas W. Fredericks, Bertram E. Hirsch, Judith A. Shapiro, Jack F. Trope, and **Anita Fineday** filed a brief for the Cheyenne-Arapaho Tribes of Oklahoma, et al. as amici curiae urging affirmance; **Bob Rabon** filed a brief for the Inter-Tribal Council of the Five Civilized Tribes as amicus curiae urging affirmance; **Joseph E. Zdarsky** and **Gerald T. Walsh** filed a brief for the Iroquois Businesspersons Association as amicus curiae urging affirmance; **G. William Rice, Gregory H. Bigler,** and **N. Brent Parmer** filed a brief for the Sac and Fox Nation, et al. as amici curiae urging affirmance; and **Glenn M. Feldman** filed a brief for Seneca-Cayuga Tribe of Oklahoma, et al. as amici curiae urging affirmance.

AIR COURIER CONFERENCE OF AMERICA, Petitioner

v

AMERICAN POSTAL WORKERS UNION, AFL-CIO, et al.

Reported in this volume: p 1125, supra.

Holding: Postal workers held to lack standing to bring suit under 5 USCS § 702 to challenge Postal Service regulation permitting international remailing by private couriers.

BRIEFS AND APPEARANCES OF COUNSEL

L. Peter Farkas, of Washington, D.C., argued the cause and, with **Brett S. Sylvester** and **James I. Campbell, Jr.,** both also of Washington, D.C., filed briefs for petitioner:

The unions lack standing because postal workers are not within the zone of interest of the private express statutes (PES).

The Court of Appeals erred in finding the unions in the zone of interest of the PES whether Administrative Procedures Act § 702 or Postal Reorganization Act § 409 is the proper jurisdictional basis for the unions' complaint.

The Postal Service's promulgation of the Remail Rule was not unreasonable, arbitrary, or capricious.

Paul J. Larkin, Jr., of the Department of Justice, Washington, D.C., argued the cause and, with Acting Solicitor General **John G. Roberts,** Assistant Attorney General **Stuart M. Gerson, Michael Jay Singer,** and **Jeffrica Jenkins Lee,** all also of the Department of Justice, Washington, D.C., filed briefs for petitioner United States Postal Service under Supreme Court Rule 12.4:

The unions cannot bring this suit to challenge the Postal Service's regulation suspending the private express statutes for international remailing.

The Postal Service reasonably suspended its monopoly in order to permit international remailing.

Keith E. Secular, of New York City, argued the cause and, with **Sophia E. Davis,** also of New York City, and **Anton G. Hajjar, Karen J. Ward,** and **Laurence Gold,** all of Washington, D.C., filed a brief for respondents:

The international remailing suspension is subject to judicial review.

The Court of Appeals correctly overturned the international remail suspension.

BUSINESS GUIDES, INC., Petitioner

v

CHROMATIC COMMUNICATIONS ENTERPRISES, INC. and MICHAEL SHIPP

Reported in this volume: p 1140, supra.

Holding: Federal Civil Procedure Rule 11 held to impose objective standard of reasonable inquiry on any party mandatorily or voluntarily signing pleading, motion, or other paper.

BRIEFS AND APPEARANCES OF COUNSEL

Stephen V. Bomse, of San Francisco, California, argued the cause and, with **Stephen N. Goldberg** and **Joshua R. Floum,** both also of San Francisco, California, filed briefs for petitioner:

The application of a negligence standard to represented parties will chill more than it will deter.

Punishing bad faith is consonant with the goal of promoting equal access to justice and seeking the truth; punishing mistakes is not.

The costs to litigants and the courts associated with the application of the objective standard of reasonableness far outweighs the benefits of such a standard.

A rule of procedure imposing sanctions on laypersons for negligent mistakes would exceed both the inherent authority of the District Courts and the power delegated to this court by Congress under the Rules Enabling Act.

Neil L. Shapiro, of San Francisco, California, argued the cause and, with **Patricia A. Perkins,** also of San Francisco, California, filed a brief for respondents:

A uniform standard of objective reasonableness comports with federal rules and common-law duty of care.

The District Court exercised discretion consistent with its power under the Rules Enabling Act.

Alan B. Morrison filed a brief for Public Citizen as amicus curiae urging reversal.

MISSISSIPPI, Applicant

v

KEVIN LEWIS TURNER

Reported in this volume: p 1172, supra.

Holding: Application by Mississippi for extension of time within which to file certiorari petition, because of budget cuts resulting in staff reductions, denied by Scalia, J.

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